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ABSTRACT

The manual presents recommended policies and procedures for educational agencies in Region 3 (Southwest U.S.) to follow in obtaining student information from or to release student information to another educational agency, particularly one located in another state within the region. Procedures address five major issues: interstate cooperation between local and state educational agencies, local and state responsibility for child find activities and for an advocacy role for handicapped students in particular, privacy rights of parents and students, due process guarantees for parents and students, and school records policies. Following a list of definitions, Section I guides the user through recommended steps to follow when a school needs to obtain information on a new student. A second section presents the steps to follow when a student leaves a school and school record information needs to be released to receiving school for utilization in preparing an individualized education plan. Following each section is a flow chart showing the primary steps for obtaining or releasing student information. Appendixes contain information and forms relating to such areas as annual notification to parents regarding student records, request for student information, notification of need for parent consent prior to disclosure, and rules and regulations regarding privacy rights of parents and students (Family Educational Rights and Privacy Act of 1974). (SB)

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Transferring Student Information Between Educational Agencies:

How to Obtain Student Information from other Educational Agencies; How to Release Student Information to other Educational Agencies

Recommended Policies and Procedures

January, 1977

Prepared by a Regional Task Force

for the Southwest Regional Resource Center
Department of Special Education
University of Utah
Salt Lake City, Utah 84112

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Recommended Policies and Procedures

Southwest Regional Resource Center

Regional Task Force Members:

Arizona: Charles Essigs
Lynn Pogreba
Bureau of Indian Affairs: Jerry Hill
Colorado: Myron Swize
New Mexico: Ruth Fletcher-Brown
Utah: Donna Carr
Southwest Regional Resource Center:
Gail Beaumont
Vance Engleman
Jean J. Moore, Editor

Consultant: Marilyn Parsley, Colorado

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nonconfidential student information.

Upon reviewing the survey information, the task force agreed to address the objective by hiring a consultant to develop a manual describing the task force's recommended procedures for transferring information on handicapped students. The SRRC engaged Dr. Marilyn Parsley of the Colorado State Department of Education as the consultant.

The work leading to the development of this document has been a cooperative regional effort. Much emphasis has been placed upon common elements across state systems with the intent of producing a practical working document useful to all states in Region 3. The SRRC is indebted to the task force members, who generously contributed their time and ideas, and to the State Directors of Special Education in Region 3 for their support of this endeavor. The task force members were: Ruth Fletcher-Brown, New Mexico; Donna Carr, Utah; Charles Essigs and Lynn Pogreba, Arizona; Jerry Hill, Bureau of Indian Affairs and Myron Swize, Colorado.

This document is offered as a resource to all who are interested in providing continuity of service for handicapped children.

TABLE OF CONTENTS

Preface ii

Introduction 1

The Manual 2

Definitions 4
Levels of Student Information 9

Section I - How to Obtain Student Information from Other Educational Agencies

1.0 Providing the Annual Notification I:1.1

2.0 Requesting Basic Student Information from Parents I:2.1

3.0 Requesting Educational Records from the Student's Previous School of Attendance I:3.1

4.0 Requesting Student Information Via Direct Contact with the Student's Previous School of Attendance I:4.1

5.0 Requesting Assistance from Your State Educational Agency I:5.1

6.0 Request for Assistance in Locating Student or Locating Information on Student Originated by LEA or BIA School I:6.1

Primary Steps in Obtaining Student Information I:6.2

Section II - How to Release Student Information to Other Educational Agencies

1.0 Requesting Assistance to Find a Handicapped Student and His Current School of Attendance II:1.1

2.0 Providing Student Record Information to Parents Upon Notification of the Student's Transferring Out of School II:2.1

3.0 Providing Student Record Information to a Transfer Student's New School of Attendance II:3.1

4.0 Providing for the Maintenance and Destruction of Student Record Information II:4.1

5.0 Primary Steps in Releasing Student Information to Other Education Agencies II:5.1

0.0 7

Appendices

A. Annual Notification to Parents Regarding Student Records. A-1

B. Request for Student Information B-1

C. Request for Student Information C-1

D. Notification of Need for Parent Consent Prior to Disclosure D-1

E. Parental Consent for Release of Level C Information and Information to a Third Party. E-1

F. Request to the State Educational Agency for Assistance with Transfer Students and Notification of the Results. F-1

G. Notification to New School of Attendance of Records Available at Previous School of Attendance, via the Parent G-1

H. Notification to Parent of Record Transfer Completed H-1

I. Record of Access. I-1

J. Rules and Regulations: Privacy Rights of Parents and Students J-1
(Family Educational Rights and Privacy Act of 1974)

K. Rules and Regulations: Privacy Act of 1974. . . . . K-1

INTRODUCTION

Local educational personnel within the states in Region 3 have for some time experienced great difficulty in tracking certain students who come from highly transient populations. Students often leave schools without notice and reappear at other schools unable to present any information about previous educational programs. This is a matter of great concern to educators who are committed to delivering quality educational programs to all children. The situation becomes even more complex and urgent when the students who are "lost between the cracks" have handicapping conditions which require special education services.

Numbered among the educators concerned about this problem are the state directors of special education in Region 3, representing Arizona, Colorado, Nevada, New Mexico, Utah and the Bureau of Indian Affairs schools. These state directors, who are on the Management Board for the Southwest Regional Resource Center (SRRC), recognized and expressed a need for establishment of a method and development of the tools which could facilitate the transfer of student information between educational agencies. These methods might also prove useful between districts within a state. Whatever was to be developed had to be practical so that local educational agencies could make use of it, simple so that learning and utilizing the method would be easy, effective so that valuable information about a student could be shared in a valid form, and, above all, economical so that lack of money would not deter getting appropriate service to handicapped students who happen to be members of mobile families.

The state directors of special education appointed representatives from their respective offices to form a task force to begin addressing this problem. The task force feels that the manual presented here, which reflects their subsequent work, is a good beginning to solving the problem described and that the proposed mechanism meets the criteria established for this task. The manual also demonstrates that a few states can cooperatively commit themselves to addressing problems that are shared by all and that must be solved if all school-aged children are to receive appropriate services.

THE MANUAL

Purpose

This manual presents recommended procedures for educational agencies in Region 3 to follow in order to obtain student information from or to release student information to another educational agency, particularly one located in another state within the Region. The procedures are designed to address five major issues: (1) interstate cooperation between local and state educational agencies, (2) local and state responsiblity for child find activities and for an advocacy role for handicapped students in particular, (3) privacy rights of parents and students, (4) due process guarantees for parents and students, and (5) school records policies. It is felt that the processes for transferring student information presented do not violate the federal statutory requirements related to these issues.

Content

The user of this manual will find it important to become familiar with the types of information commonly maintained in what is referred to as school records. To assist the reader, a visual schematic is presented in the Definition section which illustrates the four major levels of information by defining the generally accepted content of each, and describing how each level of information is obtained, how it is used, and who may have access to it. As with the recommended procedures, the definition of levels of student information was developed around federal rules, regulations and guidelines and may need to be modified in places where state rules and regulations differ. The necessity to become knowledgeable about pertinent state rules and regulations must be the responsibility of each individual involved with implementing these or any other procedures for transferring student information.

Section I of the manual guides the user through recommended steps to follow when a school needs to obtain information on a new student. Section II presents the steps to follow when a student leaves a school and school record information needs to be released to a receiving school for utilization in preparing an individual educational plan for the student. Suggested policies and procedures are set out in bold type in both sections, and are followed by discussion statements, pertinent to major procedural steps, which provide further explanation, illustration and/or interpretation for the user. References to federal statutes are made on the far left of the narrative pages. Following each section is a flow-chart showing the primary steps one needs to follow in obtaining student information from or releasing student information to other educational agencies.

The appendices contain samples of notifications to parents and other schools, and samples of forms for requesting student information or documenting access information. These have been prepared as examples and may be used as they are or modified to accommodate local situations or preferences.

It is important to note that all educational agencies or institutions receiving Office of Education funds

must follow the rules and regulations of the Family Educational Rights and Privacy Act of 1974 (also known as the Buckley-Pell Ammendment). The Bureau of Indian Affairs schools must also adhere to the requirements of the Privacy Act of 1974. The rules and regulations for these two acts are included at the end of this document.

The purpose of this manual is to provide suggested procedures for expediting the transfer of needed educational information when children change schools, not to provide a step-by-step interpretation of the laws; the order and emphasis of the components are on the processes of transferring information. As an example, the first policy presented (1.0) suggests that when a new student enrolls, the school will notify the parents of their rights regarding their child's educational records. The law is not that specific; the Family Educational Rights and Privacy Act, Part 99.6, which is referenced, requires that annual notification of rights be given to parents or eligible students. Thus, if a child enrolled following the school's annual notification, the parents might not receive the information until the next annual notification. The task force recommends, however, that procedures be instituted to assure that the parents are notified as soon as the child enters the school. This suggested procedure is thus a step beyond that mandated, but is one of the processes the task force sees as integral to the efficient transfer of educational information.

Limitations

As previously stated, it is believed that the recommended policies and procedures formulated for the purpose stated meet federal requirements for school districts in their handling of student educational records. State rules and regulations pertaining to student educational records vary extensively among the states in Region 3. This manual does not purport to provide procedures which meet all of the state requirements. When it is followed, the procedures must be modified or altered to meet the specific requirements of the user's state. The user should attend particularly to any rules regarding directory information and parent consent for release of records.

The manual does not provide for appropriate procedures which would apply to the releasing of student educational records or any information therein to persons or agencies other than local school districts, nor to the obtaining of student information from other persons or agencies. In such instances, many other legal restrictions are imposed. Recommended policies and procedures are needed for the transfer of student information between agencies, and an effort to broach the problem would be a logical follow up.

Use of the Document

The two sections of the document are numbered to permit the insertion of new information or the deletion of information that conflicts with a state policy or procedure; the numbering system permits the revision of individual items without affecting the numbering of other items. For example, pages I:1.1 and 1.2, cover the topic, "Providing the Annual Notification." Should a change occur here, these two pages could be rewritten; should the revision consist of more or fewer pages, the numbering of the rest of the document would be unaffected.

DEFINITIONS

DEFINITIONS

1. Directory information

Includes the following information relating to a student: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, and other similiar information.[1]

2. Disclosure

Means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.[1]

3. Educational institution or education agency or institution

Means any public or private agency or institution which is the receipent of funds under any Federal program referenced in 99.1(a). The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.[1]

[1] Family Education Rights and Privacy Act of 1974. 45 C.F.R. 99.3.

4. Education records

Means those records which:

A. are directly related to a student, and,
B. are maintained by an educational agency or institution or by a party acting for the agency or institution.

The term does not include:

A. records of instructional, supervisory and administrative personnel ancillary thereto which:

   1) are in the sole possession of the maker thereof, and,
   2) are not accessible or revealed to any other individual except a substitute. For the purpose of this definition a "substitute" means an indivudal who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of record in his or her position.

B. records of a law enforcement unit of an educational agency or institution which are:

1) maintained apart from the records described in paragraph (1) of this definition;
2) maintained solely for law enforcement purposes, and,
3) not disclosed to individuals other than law enforcement officials of the same jurisdiction; provided, that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

C. 1) Records relating to an individual who is employed by an educational agency or institution which:

a) are made and maintained in the normal course of business;
b) relate exclusively to the individual in that individual's capacity as an employee, and,
c) are not available for use for any other purpose.

2) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.

D. Records relating to an eligible student which are:

1) created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;
2) created, maintained, or used only in connection with the provision of treatment to the student, and;
3) not disclosed to anyone other than individuals providing the treatment; provided, that the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

E. Records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.[1]

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[1] Family Educational Rights and Privacy Act of 1974. 45 C.F.R. 99.3.

5. Parent

Includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian.[1] An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the agency or instituition has been provided with evidence that there is a state law or court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.[2]

6. Party

Means an individual, agency, institution or organization.[2]

7. Personally Identifiable

Means that the data or information includes: the name of a student, the student's parent, or other family member; the address of the student; a personal identifier, such as the student's social security number or student number; a list of personal characteristics which would make the student's identity easily traceable; or, other information which would make the student's identity easily traceable.[2]

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[1] The State of Arizona has no provision for other than parent or legal guardian in its statutes. Therefore, surrogate parents or persons acting in behalf of parents are not included in this definition for Arizona.

[2] Family Educational Rights and Privacy Act of 1974. 45 C.F.R. 99.3.

8. Record

Means any information or data recorded in any medium, including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.[2]

9. Student

A. Includes any individual with respect to whom an educational agency or institution maintains education records.

B. The term does not include an individual who has not been in attendance at an educational agency or institution. A person who has applied for admission to, but has never been in attendance at a component unit of an institution of postsecondary education (such as, the various colleges or schools which comprise a university), even if that individual is or has been in attendance at another component unit of that institutuion of postsecondary education, is not considered to be a student with respect to the component to which an application for admission has been made.[2]

10. Eligible Student

Means a student who has attained eighteen years of age, or is attending an institution of postsecondary education.[2]

11. Records of Access

A written record kept as a part of an individual's records which documents all persons, agencies, and organizations other than authorized school personnel working with the student who have had access to the student's records or information therein. The documentation must include:

A. name of the party who had access to the records;
B. purpose for which information was to be used and the authority under which it was requested;
C. date of request and date it was supplied;
D. records requested;
E. method by which the information was supplied, i.e., in written copy, personal inspection or verbal communication;
F. indication that the parents were notified of the information that was accessed and/or provided consent by release as needed.[1]

The record of access must be available to parents or eligible students on request.

12. Levels of Student Information

Refers to the various levels of documented records of information which are obtained and maintained as they relate to a student's educational program. Each level differs as to its content: how it is obtained; how it is used; and, who has access rights to that information. Generally, information can be grouped into four levels. These four levels will be referred to throughout the manual: Level A - Basic Identifying Information; Level B - Verified Information on Functioning or Performance; Level C - Tentative, Highly Personal, But Critical to Programming; Level D - Personal Professional Files. The schematic on the following pages expands on this definition.

[1] Compare with 99.32, Family Educational Rights and Privacy Act of 1974. 45 C.F.R. See also Education of the Handicapped Act, Part B as amended by P.L. 94-142. Title 45 (20 U.S.C. 1401, 1402 and 1411-20), Proposed Rules, Subpart E, Sec. 121a.453.

Levels of Student Educational Information

WHAT IS IT?	HOW IS IT OBTAINED?	HOW IS IT USED?	TO WHOM MAY IT BE DISCLOSED?
LEVEL A - Basic Identifying Information			
- Name and sex - Birthdate and birth place - Home address and telephone number - Parent or guardian name, address and phone - Names and dates of schools attended, location, and principal's name - Current health information, i.e., problems teachers should be aware of, medication, allergies - Academic information, i.e., major area of study	- From parents or guardian - From the student - From the previous school on request; received in written form	- To personally identify the student - As directory information, i.e., student rosters, reports to central administration, the SEA, or the Office of Education, etc. (excluding health information)	- Professionals working with the student - Other educational agencies - Professionals or agencies doing studies - Parent or the student if 18 years of age or older. - State and federal agencies responsible for monitoring educational programs
LEVEL B - Verified Information on Functioning or Performance			
- Results of group standardized achievement tests - Results of group standardized intelligence and aptitude tests - General medical history, i.e., diseases, screening results, immunizations, etc. - Administrative history, i.e., awards, family background, reports of disciplinary action etc.	- Developed at current school, or - On written request to a previous school of attendance	- To assist in construction of an individualized educational program	- Professionals working with the student - Other educational agencies - Professionals or agencies doing studies - Parent or the student if 18 years of age or older - State and federal agencies responsible for monitoring education programs
LEVEL C - Tentative, Highly Personal, But Critical to Programming			
- Specialized reports of professionals who have screened, assessed and/or evaluated the student, i.e., psychologist, social worker, diagnostician, physician's medical assessment and individual evaluation as it pertains to placement in a school program, etc. - Specialized reports from outside agencies or specialists, i.e., private schools, social service agencies, vocational rehabilitation, hospitals, etc. - Anecdotal records	- On special written request to the previous school when justification for its need is made - State guidelines vary with regard to requirements for parent consent to release this information. In any case, parent consent is strongly recommended. - Briefer reports obtained through direct contact and verbal report	- To assist in the development of an individualized educational program, particularly in the case of a severely involved student	- Professionals working directly with the student - Parent or the student if 18 years of age or older - Authorized officials monitoring compliance with Federal laws
LEVEL D - Personal Professional Files			
- Records of instructional, supervisory, administrative and educational personnel which are in the sole possession of the maker thereof.	- Cannot be disclosed	- Personal notes cannot be disclosed. If the professional feels these notes are of value in the educational program of a student, the professional should prepare the information for inclusion in Level C information.	- Cannot be disclosed

SECTION I

How to Obtain Student Information from Other Educational Agencies

Federal Statutory Reference	Policies*	Procedures and Comments*
	PROVIDING THE ANNUAL NOTIFICATION	
Family Educational Rights and Privacy Act of 1974, P.L. 93-380, Title IV, Sec. 438 as amended by P.L. 93-588. (20 U.S. Code 1232g (Supp. V, 1975)) 45 C.F.R. 99.6 (See 99.6, Appendix J, p. J-3)	1.0 WHEN A NEW STUDENT ENROLLS IN A LOCAL EDUCATIONAL AGENCY (LEA), THE PARENTS SHALL BE NOTIFIED IN WRITING ABOUT THEIR RIGHTS REGARDING THE STUDENT'S EDUCATIONAL RECORDS.	1.0 THE PRINCIPAL OF A SCHOOL SHOULD PROVIDE TO PARENTS OF NEW STUDENTS A POLICY STATEMENT CONCERNING THE COLLECTION, MAINTENANCE, UTILIZATION AND TRANSFERRING OF STUDENT INFORMATION USED FOR EDUCATIONAL PROGRAMMING BY THE SCHOOL AND A DESCRIPTION OF THEIR RIGHTS AS PARENTS REGARDING THEIR STUDENT'S EDUCATION RECORDS. PARENTS SHOULD BE GIVEN THREE WEEKS IN WHICH TO INFORM THE SCHOOL IN WRITING OF THE INFORMATION ABOUT THEIR STUDENT WHICH THEY DO NOT WISH TO HAVE DISCLOSED.
	1.01 The notification given to parents shall include at least the following: - a description of the kinds of student records that are maintained, what they are used for and who has access to the content, when and how they are released and where they are secured	*According to federal statutes, schools must annually inform parents of their privilege to review the records of their student, of their right to request that certain information be changed or deleted from the student's records, of their right to refuse the disclosure or transfer of student information and of their right to obtain copies of information kept in educational records.*
	- a list of publications and reports prepared by the school in which basic identifying student information is disclosed and the procedures for requesting it not be disclosed	*It must be made clear to parents what information is disclosed or transferred without their consent, for what purpose and to whom, unless they request in writing that it not be disclosed. Sections 3.0 and 4.0*

*All of the following policies and procedures are offered as suggestions, based on task force recommendations. The reader may compare the cited statutory reference to clarify the parameters of the law.

Federal Statutory Reference	Policies	Procedures and Comments
	- the title of the individual desginated as responsible for maintaining the records	*define the types of information and the procedures for obtaining that information, as does the chart in the preceding section on definitions.*
Op.Cit., Part 99.20	- an explanation of their record review rights, their right to challenge the content of their student's records and the procedures for requesting a hearing	*Generally, such a policy statement must be distributed to parents at the beginning of the school year or, in the case of transfer students, at the time of enrollment. This notification must occur at least annually.*
Op.Cit., Part 99.5	- an explanation of the procedures for releasing student record information to parties requesting all or some of the content and the notification to parents of the request made for student information	*The procedure for notifying parents can occur in different ways. For example, a separate written policy statement may be mailed to all parents, or it may be printed as a section in the school's policy manual. It may even be published in the school's newsletter. All of these meet legal requirements. A sample of an annual notification statement drawn up to be distributed to all parents, is displayed as* APPENDIX A. *Included on the sample is a tear-off for parents to sign and return to the school identifying the information they do not wish to have disclosed.*
Op.Cit., Part 99.6	- a notice of the right to file a complaint with the Office of Education regarding alleged violations of the "Family Educational Rights and Privacy Act" and information on where to obtain a copy of the policy.	

Federal Statutory Reference	Policies	Procedures and Comments
	- the title of the individual desginated as responsible for maintaining the records	*define the types of information and the procedures for obtaining that information, as does the chart in the preceding section on definitions.*
Op.Cit., Part 99.20	- an explanation of their record review rights, their right to challenge the content of their student's records and the procedures for requesting a hearing	*Generally, such a policy statement must be distributed to parents at the beginning of the school year or, in the case of transfer students, at the time of enrollment. This notification must occur at least annually.*
Op.Cit., Part 99.5	- an explanation of the procedures for releasing student record information to parties requesting all or some of the content and the notification to parents of the request made for student information	*The procedure for notifying parents can occur in different ways. For example, a separate written policy statement may be mailed to all parents, or it may be printed as a section in the school's policy manual. It may even be published in the school's newsletter. All of these meet legal requirements. A sample of an annual notification statement drawn up to be distributed to all parents, is displayed as* APPENDIX A. *Included on the sample is a tear-off for parents to sign and return to the school identifying the information they do not wish to have disclosed.*
Op.Cit., Part 99.6	- a notice of the right to file a complaint with the Office of Education regarding alleged violations of the "Family Educational Rights and Privacy Act" and information on where to obtain a copy of the policy.	

Federal Statutory Reference	Policies	Procedures and Comments
	REQUESTING BASIC STUDENT INFORMATION FROM PARENTS	
	2.0 WHEN A NEW STUDENT ENROLLS IN SCHOOL THE PRINCIPAL OF THE RECEIVING SCHOOL SHALL INITIATE A REQUEST FOR INFORMATION TO THE PARENTS OF THE STUDENT OR TO THE ELIGIBLE STUDENT. IN THE CASE OF A HANDICAPPED STUDENT, THE REQUEST SHALL BE MADE BY THE PRINCIPAL AND THE SPECIAL EDUCATION DIRECTOR.[1]	2.0 THE PARENTS OF A STUDENT WHO HAS TRANSFERRED IN SHALL BE REQUESTED TO PROVIDE BASIC IDENTIFYING INFORMATION TO THE SCHOOL. THIS SHOULD BE COMPLETED WITHIN A TWO-WEEK PERIOD FOLLOWING THE STUDENT'S ENROLLMENT BUT PREFERABLY AT THE TIME OF ENROLLMENT. APPENDIX B *Level A or basic identifying information requested of the parents should include at least the following:* *a. name and sex of the student* *b. birthdate and birthplace* *c. home address and telephone number* *d. parent's or guardian's name, address and telephone number* *e. name and date of school previously attended, address and principal's name* *f. current health information, i.e., problems teachers should be aware of such as current medications, allergies, current treatments being received, physical abnormalities, physician's name and telephone number*

[1]The special education director may be at the school, district, agency or area level.

Federal Statutory Reference	Policies	Procedures and Comments
		g. academic information, i.e., major course of study *h. activities and sports participation* *Many times parents will bring with them to the new school a copy of the student's records from the previous school. In this case, a request for additional information from the previous school may or may not be needed. When a handicapped student is involved, or suspected, it is strongly recommended that the previous school always be contacted in an attempt to gather information that will help to better understand the special needs of the student and to prepare his individualized educational program.*

Federal Statutory Reference	Policies	Procedures and Comments
	REQUESTING EDUCATIONAL RECORDS FROM THE STUDENT'S PREVIOUS SCHOOL OF ATTENDANCE	
	3.0 WHEN A NEW STUDENT ENROLLS AND THE EDUCATIONAL RECORDS ARE NOT AVAILABLE FROM THE PARENTS, THE PRINCIPAL SHALL SEND A WRITTEN REQUEST FOR THE STUDENT'S RECORDS TO HIS PREVIOUS SCHOOL OF ATTENDANCE.	3.0 A REQUEST FOR STUDENT RECORDS SHALL BE MADE BY THE PRINCIPAL TO THE PREVIOUS SCHOOL OF ATTENDANCE NO LATER THAN TWO WEEKS FOLLOWING THE STUDENT'S ENROLLMENT, UNLESS ALL INFORMATION HAS BEEN SUPPLIED BY THE PARENT. WHEN THE REQUEST CONCERNS INFORMATION ABOUT A HANDICAPPED STUDENT, THEN IT MUST CARRY THE SIGNATURE OF THE SPECIAL EDUCATION DIRECTOR AS WELL AS THE PRINCIPAL OR, IN THE CASE OF THE BUREAU OF INDIAN AFFAIRS, THE EDUCATIONAL PROGRAM DIRECTOR (OR OTHER PERSON AUTHORIZED TO HAVE RESPONSIBLITY FOR THIS PROCEDURE). IF THE APPROPRIATE SIGNATURES DO NOT ACCOMPANY THE REQUEST, A DELAY IN OBTAINING INFORMATION MAY OCCUR. *The request should identify who is making the request, the purpose for which the information will be used, the type of information needed and the date on which it is needed.*

Federal Statutory Reference	Policies	Procedures and Comments
Op.Cit., Compare 99.33	3.01 The request sent to a student's previous school of attendance shall include an assurance statement from the receiving LEA that the student information received will not be disclosed to a third party without parent permission.	3.01 An assurance statement from the receiving school that the personally identifiable student information disclosed to them will not be disclosed to another party without parent permission shall be included with the request. *See* APPENDIX C *for a sample assurance statement to be sent along with a request for information.*
	3.02 The request for student information made of a student's previous school of attendance shall always be for at least Level A information. When a handicapped student, or a student suspected of being handicapped, is involved, Levels A and B shall always be requested.	3.02 The principal and special education director, in making a request for information from a previous school of attendance for a handicapped student, shall request at least Level A and B information. Brief explanatory statements justifying the need for Level B information should accompany the request.

Federal Statutory Reference	Policies	Procedures and Comments
		Level B information is verified information about the functioning or performance level of the student and includes the following: *a. group standardized achievement test results, i.e., California Test of Basic Skills (CTBS), etc.* *b. group standardized intelligence and aptitude test results, i.e., Standardized Achievement Test scores (SAT), and Differential Aptitude Test, etc.* *c. general medical history of the student, i.e., record of diseases and immunizations, results of vision and hearing examinations, significant physical accidents, etc.* *d. administrative history, i.e., attendance record, reports of disciplinary action, family background, awards received, special programs attended and services provided (speech, social worker, occupational therapist, program for the hearing handicapped, etc.), progress reports, etc.*

Federal Statutory Reference	Policies	Procedures and Comments
	3.03 The request for information sent to a student's previous school of attendance shall ask for Level C information when that type of information would be critical to programming for a student's needs, particularly for a handicapped student or one suspected of being handicapped.	3.03 The principal and special education director shall request Level C information concerning a handicapped student when it seems critical for preparing an individualized education plan for the student. Some states require parental permission prior to transfer of this type of information. In such cases, a parental consent form should accompany the request. *The request should identify who is making the request, the purpose for which the information will be used, the type of information needed and the date on which it is needed.* *In addition, the request for Level C information should contain statements justifying the urgent need for this type of information. For example, if the student is severely handicapped but the time required to complete an assessment and a formal staffing of the student would delay his placement in a special education program, the reports prepared by professionals at the student's previous school of attendance could facilitate the preparation of his program and allow appropriate placement to occur.*

Federal Statutory Reference	Policies	Procedures and Comments
Op.Cit., Part 99.31		*Although federal guidelines do not require parental permission to transfer Level C information to a new school or to request it from a previous school of attendance, unless it is third-party information, State guidelines vary in their requirements. Because of the variance in individual state policies, and also because of the strong emotional feelings of parents surrounding the use and transfer of highly personal information about their children, and the concern of professionals in disclosing this type of information, it is not only appropriate but recommended that the sending school obtain parent permission for release of such records. The receiving school may opt to obtain parental permission prior to initiating this type of request in order to save time.* (See APPENDICES D AND E.) *Level C information is the type of information which is often kept in a special services folder at the school and not in the usual cumulative folder of student information. The former is open for access to those professionals who are working directly with the student in his/her educational program and not to the general school staff as are the cumulative folders.*

Federal Statutory Reference	Policies	Procedures and Comments
Compare 99.3(4) for related information on items a. and b. as they pertain to <u>eligible</u> students.		*Level C information is tentative information highly personal in nature but critical to programming for a student's needs. It includes the following:* *a. specialized reports of professionals who have screened, assessed and/or evaluated the student, i.e., psychologist's report, social worker's report, physician's report (as it pertains to placement in a school program)* *b. specialized reports from outside agencies or specialists, i.e., private schools, hospitals, social service agencies, vocational rehabilitation, etc.* *c. anecdotal records, i.e., narrative reports which are "descriptive, verified, limited to the professional's area, useful to planning or revising a student's educational program, objective, dated and signed." (Swift, L. Player, R., Hines, D., "Guideline Policies and Procedures for Complying with the Family Educational Rights and Privacy Act," Association of Washington School Principals, Olympia, Washington, 1978.)*

Federal Statutory Reference	Policies	Procedures and Comments
	REQUESTING STUDENT INFORMATION VIA DIRECT CONTACT WITH PERSONS AT THE STUDENT'S PREVIOUS SCHOOL OF ATTENDANCE.	
	4.0 WHEN ALL FORMAL WRITTEN PROCEDURES FOR REQUESTING STUDENT RECORDS FOR A HANDICAPPED STUDENT, REGARDLESS OF THE SEVERITY OF HIS HANDICAPPING CONDITION, HAVE BEEN FOLLOWED AND NO STUDENT INFORMATION HAS BEEN RECEIVED, THE PRINCIPAL, TOGETHER WITH THE SPECIAL EDUCATION DIRECTOR, SHALL INITIATE DIRECT CONTACT WITH THE STUDENT'S PREVIOUS SCHOOL OF ATTENDANCE.	4.0 THE RECEIVING SCHOOL SHOULD ALLOW NOT MORE THAN 45 DAYS FROM THE DATE ON WHICH A WRITTEN INFORMATION REQUEST WAS SUBMITTED BEFORE INITIATING DIRECT CONTACT WITH THE STUDENT'S PREVIOUS SCHOOL OF ATTENDANCE. *This does not mean that verbal contact, either by telephone or visit, with persons at the previous school of attendance should not occur until after the 45 day period is up. If, for instance, no information was supplied by the parents of the new student, professionally it may be wise to discuss his/her previous program with those personally responsible. All verbal contacts should be documented according to appropriate district procedures.* *Examples of other cases where initiating direct verbal contact is strongly recommended and where the 45 day waiting period need not be adhered to are:* *1) The schedule for assessments and staffings at the receiving school indicates that these necessary procedures cannot be*

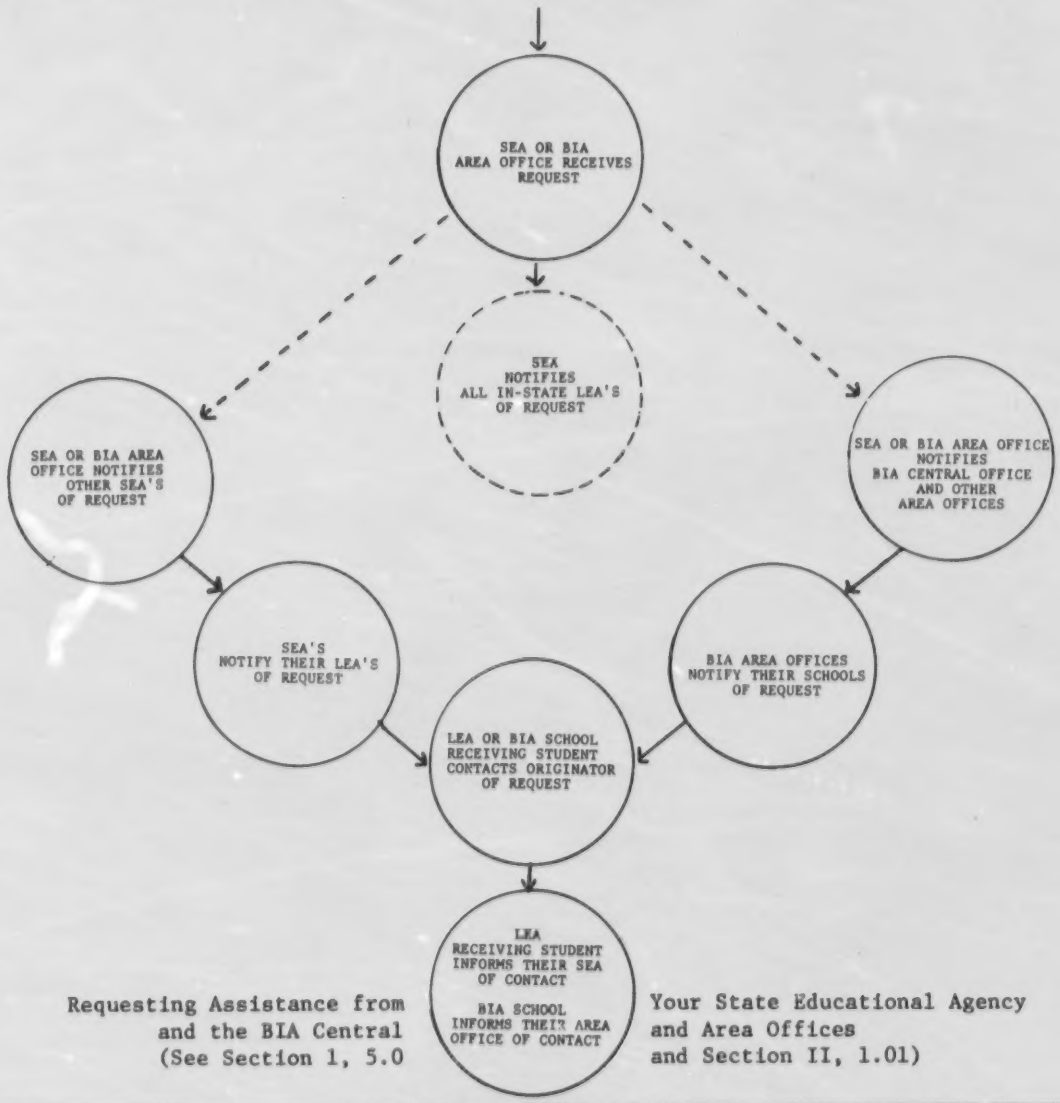
Federal Statutory Reference	Policies	Procedures and Comments
		conducted for the new student until a considerable amount of time has passed, therefore, preventing an obviously handicapped student from receiving needed special services for some time.
		2) *The student's parents specifically request the new school of attendance to make immediate contact with the previous school since no information was transferred via the parents and the parents have expressed concern about a continuity of special services for their handicapped student.*

Federal Statutory Reference	Policies	Procedures and Comments
Op.Cit., 99.37 [Please note that names and other directory information can be disclosed only if the educational agency or institution has given public notice of information that the agency or institution will disclose, etc.]	**REQUESTING ASSISTANCE FROM YOUR STATE EDUCATIONAL AGENCY.** 5.0 WHEN ALL OF THE ABOVE PROCEDURES TO TRACK TRANSFER STUDENT INFORMATION AND RECEIVE IT HAVE BEEN EXHAUSTED, THE CHIEF ADMINISTRATOR, THE PRINCIPAL AND SPECIAL EDUCATION DIRECTOR OR THE AUTHORIZED PERSON (EDUCATIONAL PROGRAM DIRECTOR), IN THE CASE OF A HANDICAPPED STUDENT OR ONE SUSPECTED OF BEING HANDICAPPED, SHALL SUBMIT A REQUEST FOR ASSISTANCE TO THEIR STATE EDUCATIONAL AGENCY SPECIAL EDUCATION DIRECTOR.	5.0 NOTE: THIS IS ONE SUGGESTED PROCEDURE. SINCE STATE POLICIES VARY IT IS NOT NECESSARILY FEASIBLE FOR ALL STATES. INDIVIDUAL STATE POLICIES SHOULD BE CONSULTED. THE CHIEF ADMINISTRATOR, THE PRINCIPAL, THE SPECIAL EDUCATION DIRECTOR AND/OR EDUCATIONAL PROGRAM DIRECTOR SHALL SUBMIT A WRITTEN REQUEST TO THE STATE EDUCATIONAL AGENCY'S SPECIAL EDUCATION DIRECTOR FOR ASSISTANCE IN TRACKING STUDENT INFORMATION FOR (A) THOSE TRANSFERRED STUDENTS WHOSE PREVIOUS KNOWN SCHOOL OF ATTENDANCE WAS IN-STATE BUT NO RESPONSE TO INFORMATION REQUESTS HAS BEEN MADE, (B) THOSE TRANSFERRED STUDENTS WHOSE PREVIOUS KNOWN SCHOOL OF ATTENDANCE WAS IN THE FIVE STATE REGION BUT NO RESPONSE TO INFORMATION REQUESTS HAS BEEN MADE, OR (C) THOSE TRANSFERRED STUDENTS WHOSE PREVIOUS SCHOOL OF ATTENDANCE IS UNKNOWN. SUCH A REQUEST FOR ASSISTANCE SHOULD BE INITIATED IMMEDIATELY AFTER THE 45 DAY WAITING PERIOD HAS EXPIRED.

Federal Statutory Reference	Policies	Procedures and Comments
Op.Cit., 99.37 [Please note that names and other directory information can be disclosed only if the eudcational agency or institution has given public notice of information that the agency or institution will disclose, etc.]	5.01 The state educational agency special education director shall establish a notification procedure to local educational agency special education directors in his state, to the other state educational agency special education directors in the region and Bureau of Indian Affairs concerning transfer students received by local educational agencies for whom information from a previous school of attendance has been unavailable. A request shall be made for assistance in identifying the student's previous school and obtaining information from his previous school.	5.01 The state educational agency special education director will send an immediate request for information to an in-state local educational agency where a transfer student was known to attend. The directive from the state educational agency director will instruct the local educational agency to communicate directly with the receiving local educational agency and to notify the state educational agency when record information has been transferred in accordance with established policies. *The state educational agency special education director will notify and request assistance of another state educational agency or the Bureau of Indian Affairs in obtaining transfer student information when the local educational agency of previous attendance is known but has not honored the request. Student information should not be sent to the state educational agency making the request but directly to the local educational agency of attendance.* *The state educational agency special education director will send the name of a transfer student whose previous school of attendance is unknown to all*

Federal Statutory Reference	Policies	Procedures and Comments
		other state educational agency directors in the five-state region and the Bureau of Indian Affairs and to the local educational agency special education directors in-state. *This notification will be accompanied by a request for assistance in locating the previous school of attendance and in obtaining relevant student information from school records. The request should identify any Level A information known about the student(s) in question and the name, address and contact person of the present school of attendance. A sample of a request form from the local educational agency is in* APPENDIX F. *The local educational agency recognizing the student(s) in question should contact the local educational agency of attendance and coordinate the transfer of student information. Both local education agencies should notify the state educational agency of the action taken.*

Request for Assistance in LOCATING INFORMATION ON STUDENT OR LOCATING STUDENT Originated by LEA or BIA School

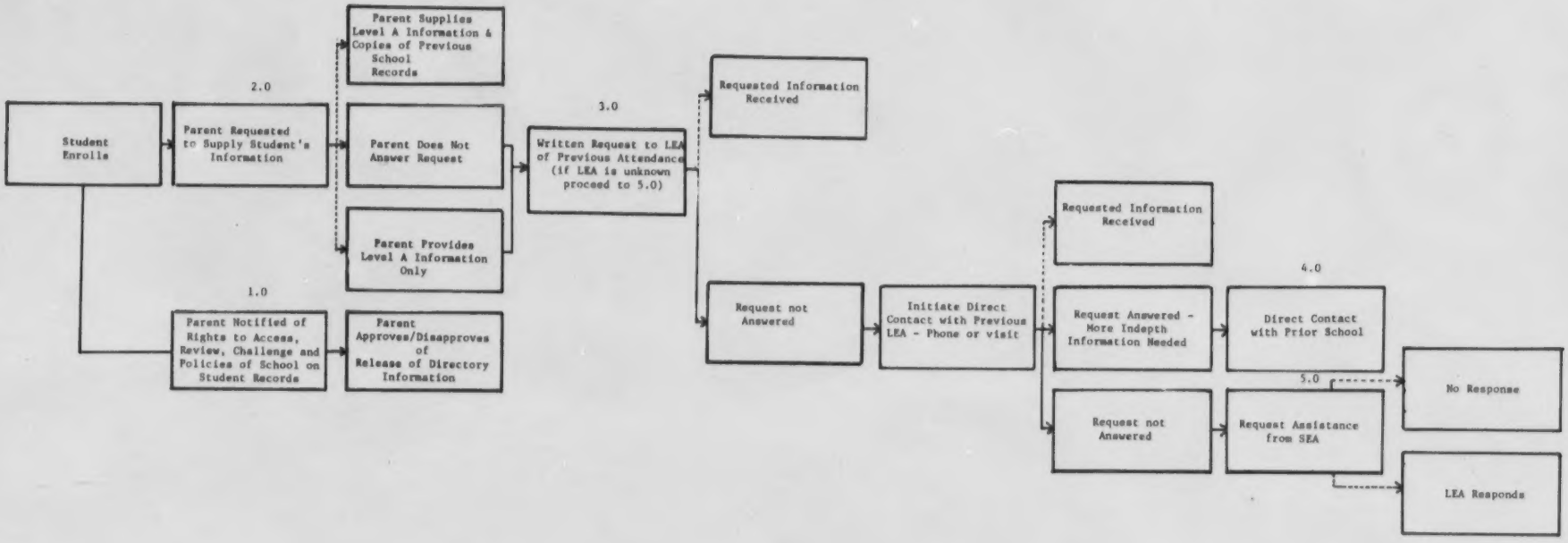

SEA OR BIA AREA OFFICE RECEIVES REQUEST
SEA NOTIFIES ALL IN-STATE LEA'S OF REQUEST
SEA OR BIA AREA OFFICE NOTIFIES OTHER SEA'S OF REQUEST
SEA OR BIA AREA OFFICE NOTIFIES BIA CENTRAL OFFICE AND OTHER AREA OFFICES
SEA'S NOTIFY THEIR LEA'S OF REQUEST
BIA AREA OFFICES NOTIFY THEIR SCHOOLS OF REQUEST
LEA OR BIA SCHOOL RECEIVING STUDENT CONTACTS ORIGINATOR OF REQUEST
LEA RECEIVING STUDENT INFORMS THEIR SEA OF CONTACT
BIA SCHOOL INFORMS THEIR AREA OFFICE OF CONTACT

Requesting Assistance from and the BIA Central (See Section 1, 5.0

Your State Educational Agency and Area Offices and Section II, 1.01)

PRIMARY STEPS IN OBTAINING STUDENT INFORMATION

(REFERENCED TO THE TEXT - SECTION I)


Student Enrolls
1.0
Parent Notified of Rights to Access, Review, Challenge and Policies of School on Student Records
Parent Approves/Disapproves of Release of Directory Information
2.0
Parent Requested to Supply Student's Information
Parent Supplies Level A Information & Copies of Previous School Records
Parent Does Not Answer Request
Parent Provides Level A Information Only
3.0
Written Request to LEA of Previous Attendance (if LEA is unknown proceed to 5.0)
Requested Information Received
Request not Answered
Initiate Direct Contact with Previous LEA - Phone or visit
Requested Information Received
Request Answered - More Indepth Information Needed
Request not Answered
4.0
Direct Contact with Prior School
5.0
Request Assistance from SEA
No Response
LEA Responds

SECTION II

How to Release Student Information to Other Educational Agencies

Federal Statutory Reference	Policies*	Procedures and Comments *
Family Educational Rights and Privacy Act of 1974, P.L. 93-380, Title IV, Sec. 438 as amended by P.L. 93-588. (20 U.S. Code 1232g (Supp. V, 1975)) 45 C.F.R. Op.Cit., 99.37 [Please note that names and other directory information can be disclosed only if the educational agency or institution has given public notice of information that the agency or institution will disclose, etc.]	**REQUESTING ASSISTANCE TO FIND A HANDICAPPED STUDENT AND HIS CURRENT SCHOOL OF ATTENDANCE** 1.0 WHEN A STUDENT WHO HAS BEEN ENROLLED IS ABSENT FROM SCHOOL FOR A PERIOD OF TIME WITH NO COMMUNICATION RECEIVED FROM THE STUDENT, HIS PARENTS OR A RECEIVING SCHOOL, ACTIONS SHALL BE TAKEN TO IDENTIFY HIS WHEREABOUTS AND, IF HE HAS LEFT THE DISTRICT, THE NEW SCHOOL DISTRICT IN WHICH HE MAY HAVE ENROLLED.	1.0 THE PRINCIPAL AND THE SPECIAL EDUCATION DIRECTOR SHALL DIRECT APPROPRIATE STAFF MEMBERS TO ASSIST IN THE SEARCH FOR A HANDICAPPED STUDENT WHO HAS BEEN ABSENT FROM SCHOOL FOR A MARKED PERIOD OF TIME. *Current federal statutes place demands on educators to search out and find all handicapped students in need of special service and to provide assurances that all handicapped students are being serviced in appropriate educational programs. Many times when students are lost in the system, modern scientific approaches are not enough to keep them from "falling in the cracks." Establishing complex computer systems will not prevent this from happening or solve it once a student disappears from the roles. It becomes our professional obligation to muster our human resources and find a student whom we know, or suspect, to be the victim of a complicated system.* *A staff team made up of the principal, special education director and other staff members who worked with the missing student should determine what actions might be initiated locally to find the handicapped student absent*

* All of the following policies and procedures are offered as suggestions, based on task force recommendations. The reader may compare the cited statutory reference to clarify the parameters of the law.

Federal Statutory Reference	Policies	Procedures and Comments
		from school. Appropriate staff should be assigned to follow through. A social worker may make a visit to the student's home, may inquire about the family's local physician, other agencies or public places known to be frequented by families in the neighborhood of the student's previous residence.
Op.Cit., 99.37	1.01 The state educational agencies in the five-state region and the Bureau of Indian Affairs shall provide ways to assist local educational agencies in their search for a handicapped student and in identifying the student's current school of attendance when a request to do so is received.	1.01 NOTE: THIS IS ONE SUGGESTED PROCEDURE. SINCE STATE POLICIES VARY, IT IS NOT NECESSARILY FEASIBLE FOR ALL STATES. INDIVIDUAL STATE POLICIES SHOULD BE CONSULTED. The chief administrator, the principal and the special education director and/or the educational program director of the student's previous school of attendance shall request assistance from their state educational agency special education director in locating the student and his/her current school of attendance. The student's basic identifying information shall be submitted along with the request for assistance to the state educational agency.

Federal Statutory Reference	Policies	Procedures and Comments
		When a request for assistance in finding a student originates at a local school operated under the Bureau of Indian Affairs (BIA), the request should be made by the local educational program administrator to the appropriate BIA Area Office and the Central Office in Albuquerque which in turn will notify the state educational agencies. The Central Office should be the contact to which requests for assistance are sent by the five state educational agencies. After a request is received by a state educational agency or the Bureau of Indian Affairs Area Office and Central Office from one of their local schools, the state agency's special education director shall submit the basic identifying information of the student whose current local school is unknown to all local educational agency special education directors in that state, to the other four state special education directors and to the director of special education of the BIA Central Office and

Federal Statutory Reference	Policies	Procedures and Comments
		authorized officials in appropriate BIA Area Offices. The contact person's name and the name and address of the school searching for the student shall be included. Any local agency recognizing the name(s) of the student(s) in question shall contact the local agency searching for the student and communicate with them about the transfer of student information in accordance with established policies. Both local educational agencies should notify their respective parent agency of the contact made and the action taken. (See APPENDIX F; also p. I:6.1)

Federal Statutory Reference	Policies	Procedures and Comments
	PROVIDING STUDENT RECORD INFORMATION TO PARENTS UPON NOTIFICATION OF THE STUDENT'S TRANSFERRING OUT OF SCHOOL	
	2.0 WHEN A HANDICAPPED STUDENT TRANSFERS OUT AND THE LOCAL EDUCATIONAL AGENCY RECEIVES NOTIFICATION FROM THE PARENTS OF THE TRANSFER, THE PRINCIPAL AND SPECIAL EDUCATION DIRECTOR SHALL MAKE EVERY ATTEMPT TO SEE THAT THE TRANSFER OF APPROPRIATE INFORMATION, VALUABLE FOR DEVELOPING AN EDUCATIONAL PLAN OF SERVICE FOR THE STUDENT, IS EXPEDITED.	2.0 THE PRINCIPAL WILL INFORM THE PARENTS OF THEIR STUDENT'S RECORDS, THE CONTENT AND HOW THE INFORMATION MIGHT BENEFIT THE STAFF MEMBERS IN THE NEW SCHOOL WHICH THEIR STUDENT WILL BE ATTENDING. PARENTS SHALL BE AFFORDED AN OPPORTUNITY TO REVIEW THEIR STUDENT'S RECORDS WITH A PROFESSIONAL PERSON AVAILABLE TO INTERPRET THE SPECIFICS AND ANSWER QUESTIONS REGARDING THE MATERIAL INCLUDED. IF THE PARENT MAKES A REQUEST FOR A COPY OF HIS STUDENT'S RECORDS, IT SHALL BE PROVIDED TO HIM WITHIN A 45 DAY PERIOD. *Providing a copy of available records to parents may hasten the delivery of them to a new school of attendance. Often, however, the new school does not receive the information for various reasons. The parent may neglect to inform the new school of the existence of this copy or the records may get lost in moving.* *It is suggested that other ways may be more efficient and effective in speeding up the process of transferring student records. If, when the parent informs the school of attendance that his handicapped student will be transferring to another school, the parent is*

Federal Statutory Reference	Policies	Procedures and Comments
		presented with a form and instructed to present it to the new school upon the student's enrollment, a notification to the principal of the receiving school about the records available on request in the previous school may occur. (See APPENDIX G for a sample of a notification and request form to a new school.)

Federal Statutory Reference	Policies	Procedures and Comments
Family Educational Rights and Privacy Act of 1974, P.L. 93-380 Title IV, Sec. 438 as amended by P.L. 93-588. (20 U.S. Code 1232g (Supp. V, 1975)) 45 C.F.R. 99.11. Compare 99.31(a)(2); see also 99.32.	**PROVIDING STUDENT RECORD INFORMATION TO A TRANSFER STUDENT'S NEW SCHOOL OF ATTENDANCE**	
	3.0 WHEN A REQUEST FOR STUDENT INFORMATION IS RECEIVED FROM A LOCAL EDUCATIONAL AGENCY RECEIVING THE TRANSFERRING HANDICAPPED STUDENT, THE PRINCIPAL OF THE PREVIOUS SCHOOL OF ATTENDANCE SHALL VERIFY THE REQUEST AND SEE THAT AN APPROPRIATE RESPONSE IS MADE.	3.0 A REQUEST FOR STUDENT INFORMATION ON A HANDICAPPED STUDENT SHALL BE HONORED WITHIN A PERIOD NOT TO EXCEED 45 DAYS. THE PRINCIPAL OF THE PREVIOUS SCHOOL OF ATTENDANCE SHALL VERIFY THE LEGITIMACY OF THE LOCAL AGENCY AND THE AUTHORITY OF THE PERSON MAKING THE REQUEST.
		Although the consent of parents to release student record information is needed in many instances, it is usually not required in order to transfer Level A and B student records to another school district where the student will be attending.[1] *The parent, or the student if he is 18 years of age or older, shall be notified of the transfer, however. Notification may consist of a written notice sent to the parent's last known address or the publication of a section in the school's policy manual distributed annually explaining the policy for transferring student information. The notification must inform the parents about who is making the request, what information is*

[1] An exception is the State of Arizona, which does require parent permission for transfer of any student records to another school district.

Federal Statutory Reference	Policies	Procedures and Comments
		requested, the purpose for which it will be used and the date of the request. They must also be informed of their rights to review the records transferred, to ask for a copy and to challenge the content. For states in which parental permission is not required in order to transfer Level A and B student records to a school in which the student is enrolling, the record transfer and the notification to the parents may occur simultaneously. (See APPENDIX H)
Op.Cit. Compare 99.31(a)(2)	3.01 When student records are requested by another local education agency where a transferred-out student will be attending, these records shall not be sent unless an assurance statement is received from the requesting agency stating that the information supplied will not be released to any other party without the parents' consent.	3.01 The assurance statement from a requesting agency must be on file in the school sending the information prior to its release. *Levels A and B information shall be supplied to a requesting school without question. However, it is suggested that before Level C information is transferred the requesting school must provide a statement explaining the purpose for which it is needed and other statements of justification. Due to varying state policies regarding the need for parental consent prior to transfer of Level C information, and also because of the strong emotional feelings of parents regarding the use of highly personal information about their children, it is strongly recommended that parental permission be obtained prior to sending*

Federal Statutory Reference	Policies	Procedures and Comments
		such information. Individual state policies should be consulted in any event. (See Section I, 3.0.)
Op.Cit., compare 99.31	3.02 When a verbal request for information on a student transferred out is received from the new school of attandance, it shall be honored only after protective safeguards are taken.	3.02 If a local educational agency should receive a request for student information by telephone, the information shall not be provided until verification of the caller has been made. This may be done by recording the caller's name, the information requested and the purpose which that information will serve. The existence of the local educational agency must be verified either by checking in the state directory, the telephone book or by placing a call to the state educational agency. After this is completed to satisfaction, return the call.
		It is suggested that Level A and B information could be supplied if the requestor is known and/or verified and assurance is given that the request will be put in writing and submitted to the local school responding to the request. It is recommended that parent permission

Federal Statutory Reference	Policies	Procedures and Comments
		be obtained prior to sending Level C information. *Telephone requests should be honored if the situation is critical for effective programming for the student or if the health or safety of the student is in question. Section I, 4.0 in this manual provides an example of a telephone request which may be received.*

Federal Statutory Reference	Policies	Procedures and Comments
		be obtained prior to sending Level C information. *Telephone requests should be honored if the situation is critical for effective programming for the student or if the health or safety of the student is in question. Section I, 4.0 in this manual provides an example of a telephone request which may be received.*

Federal Statutory Reference	Policies	Procedures and Comments
Education of the Handicapped Act, Part B as amended by P.L. 94-142. Title 45 (20 U.S.C. 1401, 1402 and 1411-20), Proposed Rules, Subpart E, Sec. 121a.462-463.	**PROVIDING FOR THE MAINTENANCE AND DESTRUCTION OF STUDENT RECORD INFORMATION** 4.0 THE LOCAL EDUCATIONAL AGENCIES SHALL PROVIDE FOR MAINTAINING AND DESTROYING STUDENT RECORDS ACCORDING TO FEDERAL AND STATE STATUTES, RULES AND REGULATIONS.	4.0 THE LOCAL EDUCATIONAL AGENCY SHALL ASSIGN ONE PERSON THE RESPONSIBILITY FOR MAINTAINING ALL STUDENT RECORDS ACCORDING TO LEGAL REQUIREMENTS. THE SCHOOL'S POLICY MANUAL WILL STATE WHO MAY HAVE ACCESS TO STUDENT RECORDS. A LIST OF THE PARTIES WHO HAVE REQUESTED OR ACCESSED STUDENT INFORMATION MUST BE KEPT WITH EACH FILE. *The destruction of a student file varies with the level of information it represents. Much of Level A information may be included in the requirements for permanent files which must be kept in perpetuity. It is wise to refer to the various state statutes on permanent records but generally this information includes:* *-name, address, telephone number* *-attendance record* *-level completed* *-year completed* *-courses taken and grades received* *Additional information of Level A and B type which is kept in a student's cumulative file should be maintained three years after it no longer is needed for providing educational services.*

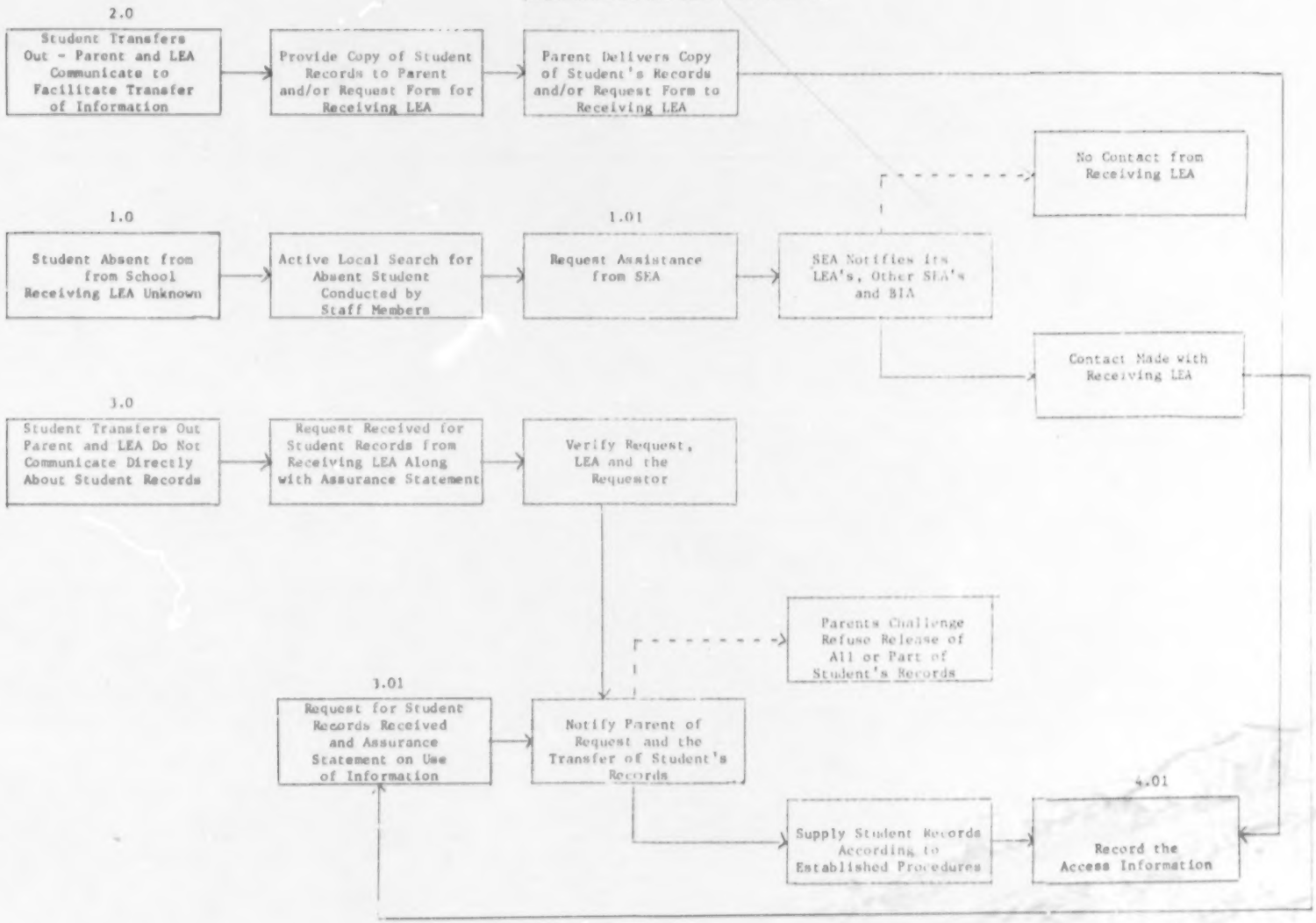
Federal Statutory Reference	Policies	Procedures and Comments
		Level C information is generally that information which is maintained in a special services file and is to be destroyed within five years after the information is no longer needed to provide an educational program to the student. Recent federal statutes and regulations require that student record data relating to handicapping conditions be destroyed within the five year period immediately following the close of the student's educational program. *A student's records may not be destroyed until a reasonable effort has been made to notify the parents. They must be given ample opportunity to review the records and to request a copy of all records to be destroyed. It is suggested that no less than 45 days be allowed between the time of notification to parents and the destruction of their student's records. In the case of a student 18 years of age and older, the same privileges of notification, review and receiving a copy of his records shall be granted.*
Family Educational Rights and Privacy Act of 1974, P.L. 93-380, Title IV, Sec. 438 as amended by P.L. 93-568. (20 U.S. Code 1232g (Supp. V., 1975)) 45 C.F.R. 99.32 (footnote continued).	4.01 The local educational agency shall provide that a record of all requests and releases of information from student records be maintained and kept with the student files.	4.01 That person assigned the responsibility for maintaining student files must see that a record of access is kept in each student's file. The information recorded on the

Federal Statutory Reference	Policies	Procedures and Comments
See also Education of the Handicapped Act, Part B as amended by P.L. 94-142. Title 45 (20 U.S.C. 1401, 1402 and 1411-20), Proposed Rules Subpart E, Sec. 121a.453.		record should include: a. date the request was received; b. who made the request; c. intended purpose for the information, including who would be using the information; d. date the request was answered; e. verification that the parents were notified and offered an opportunity to review and/or challenge the records requested; f. assurances from the requestor that the information would not be transferred to anyone else without the parent's prior written consent; g. attachment of the necessary permission for access; h. citation of authority source when an individual has authority for access under federal statutes. (See APPENDIX I for a sample record of access form.)

Federal Statutory Reference	Policies	Procedures and Comments
		It is not necessary to record information released to personnel of the school district who work with the handicapped student. The local educational agency must make the record of access to a student's file available to parents or eligible students whenever a request is made to review the student's records.

PRIMARY STEPS IN RELEASING STUDENT INFORMATION
TO OTHER EDUCATIONAL AGENCIES

(Referenced to the Text - Section II)


2.0
Student Transfers Out - Parent and LEA Communicate to Facilitate Transfer of Information
Provide Copy of Student Records to Parent and/or Request Form for Receiving LEA
Parent Delivers Copy of Student's Records and/or Request Form to Receiving LEA
No Contact from Receiving LEA
1.0
Student Absent from from School Receiving LEA Unknown
Active Local Search for Absent Student Conducted by Staff Members
1.01
Request Assistance from SEA
SEA Notifies its LEA's, Other SEA's and BIA
Contact Made with Receiving LEA
3.0
Student Transfers Out Parent and LEA Do Not Communicate Directly About Student Records
Request Received for Student Records from Receiving LEA Along with Assurance Statement
Verify Request, LEA and the Requestor
Parents Challenge Refuse Release of All or Part of Student's Records
3.01
Request for Student Records Received and Assurance Statement on Use of Information
Notify Parent of Request and the Transfer of Student's Records
4.01
Supply Student Records According to Established Procedures
Record the Access Information

APPENDICES

Sample Forms Generated and Reviewed
by Regional Task Force Members and Consultant

Appendix A

SAMPLE FORM

Annual Notification to Parents
Regarding Student Records

Dear Parent:

So that the staff of Stout School in Ship County School District can

-provide the most appropriate program for your son/daughter
-be aware of his/her needs and interests
-assist him/her in later job placement
-assist in gaining entrance to other programs or schools

records are maintained which include information about your son/daughter and his/her school program. These records are kept in the central office of Stout School under the supervision of *Ms. Jane Jones*, and are available only to the teachers and staff working with the student. If your son/daughter should transfer to another school these records will be sent to the new school upon their request. Otherwise, records are not released to most agencies or persons without parent consent.

During the school year, Stout School prepares a yearbook which identifies school club members, honor students, members of our sports teams and interesting highlights of the year. At times, our PTA, our central office or other school affiliated groups may prepare publications or newspaper releases which use "directory information" about our students. Directory information in our district includes the name of the student, date and place of birth, major areas of study, awards received, participation in activities and sports, height and weight of members of athletic teams, dates of attendance and previous school of attendance. According to federal law, this directory information as identified above may be publicly released without permission of parents. However, if you do not wish to have this information released about your son/daughter you may so request by signing the form at the bottom of this page, tearing on the dotted lines and sending it to *James Jamison*, principal, within ten days. If this notification is not received, we will assume, that your permission is given to use your son's/daughter's directory information as described above.

You, as a parent, (or your son/daughter if 18 or over) have the right to review all of your son's/daughter's records at any time and should contact *Mr. Jamison*, principal, for an appointment if you wish to do so. School personnel will be available to review the content with you. Copies may be requested for the cost of copying.

If you, or your adult age student, believe something in the record file is inaccurate or misleading, you have the right to request that a correction be made and to add comments of your own. At any time when an agreement between the principal and parent cannot be reached, you may contact *Dr. John Johnson*, superintendent, and request a hearing. Federal law also permits parents to file a complaint with the United States Office of Education in Washington, D.C., if you feel the school is violating public school records policies and statutes. You may obtain a manual which more clearly describes the school's record policies from the principal's office.

- - - -

APPENDIX B

SAMPLE FORM

REQUEST FOR STUDENT INFORMATION

To be completed by the parent or guardian at enrollment
or no later than two weeks following enrollment

1. Student's Name _____ (First / Middle / Last)
2. Sex ☐ Male ☐ Female
3. Student's Date of Birth _____ (Month / Day / Year)
4. Student's Place of Birth _____ (City / State)
5. Student's Home Address _____ (No. / Street / City / State)
6. Telephone _____
7. Parent's or Guardian's Home Address (if different from student's above) _____ (No. / Street / City / State)
8. Telephone _____
9. Name of Last School of Attendance _____
10. Address of Last School of Attendance _____ (No. / Street / City / State)
11. Telephone of Last School of Attendance _____
12. Dates Attended Last School of Attendance _____ (Month / Day / Year / Month / Day / Year)
13. Principal's Name at Last School _____ (First / Last)
14. Grade or Course of Study for Enrollment _____
15. Student's General Health (Check one) ☐ Excellent ☐ Good ☐ Fair ☐ Poor
16. Allergies (if any) (Please List) _____
17. Medications or Treatments Currently Taking (if any) _____
18. Physcial, or other Problems Teachers should be aware of (Please specify) _____
19. Physician's Name _____ (First / Middle / Last)
20. Physician's Address _____ (No. / Street / City / State)
21. Physician's Telephone _____

Comments you would like to make about your student that might help teachers and staff in planning for your student's needs:

_____

_____

_____

_____

Copy to
Student
File

APPENDIX C

SAMPLE FORM

Request for Student Information

Requestor:

(Name or Agency) (Address)

Requested From:

(Name or Agency) (Address)

Student:

(Name) (Address)

(Parent or Guardian Name) (Address)

(Previous School) (Dates Attended) (Address)

Purpose for Request:

Check as Appropriate:

No Information Available About Previous School Program: ☐

Need Information to Help Prepare Educational Program for Student: ☐

Need Verification That the Student Has a Handicapping Condition: ☐

Need Assistance in Understanding Extremely Complex Behavior and Needs: ☐

Need Evaluation Information to Satisfy Urgent Need for Immediate Special Education Placement: ☐

Other Purposes: _____

C-1

(continued next page)

Types of Information Requested:

Check as Appropriate:		Justification:
Level A-Basic Identifiers	☐	
Level B-Verified, functioning performance levels	☐	
Level C-Judgmental, specialized reports, critical to programming, information on handicapping condition	☐	

Other Comments: _____

Assurance Statement and Signatures:

In making this request, the undersigned does agree that the information received shall be used only by the professional school staff assigned to work with the student in his educational program and will not release the information to any other party without the written consent of the parent.

Date Requested: _____

Principal: _____

Sp. Ed. Director: _____

Authorized Person: _____

APPENDIX D SAMPLE FORM

Notification of Need
for Parent Consent Prior to Disclosure

School _____

Dear _____:

The _____ is in receipt of your request for available student information for _____.

Enclosed you will find the following directory and class information:

_____

_____

_____

A signed parental consent for forwarding individual diagnostic data must be received before we can honor your request for specific psychological information. Attached is a parental consent form for your use.

Return this form to: _____
(Authority)

_____ _____
School LEA

_____
Address

Copy to
Student File

APPENDIX E

SAMPLE FORM

Parental Consent for Release of
Level C Information and
Information to a Third Party

Dear Parent:

This is to inform you that _____ who is _____ and represents _____ has requested information and copies of records relating to your son/daughter _____ and his/her educational program.
(Name)

Copies of the following records have been requested:

Records	Reason

According to the "Family Educational Rights and Privacy Act" of 1974, it is your right to be informed of this request, review the records which have been requested and receive a copy at your expense. We will release the records to the party named above with the assurance that the information received will be used only by the requestor and only for the reason stated above and after receiving your written consent to release the records. If you consent to the release, please sign at the bottom of the page and return.

Please contact me with further questions and/or return the form within 14 days.

Sincerely,

_____
(Principal)

I, _____, on _____, do agree that the records received as listed
(Name of Requestor) (Date)
above will be used only by the professional school staff assigned to work with the student named above in his/her educational program and will not release this information to any other party without the written consent of the parent.

_____
(Signature of Requestor)

I, _____, as the parent of _____ on _____
(Parent's signature) (Student's name) (Date)
do consent to release of the records listed above to the party named above, and am aware of my rights to review the records and receive a copy at my expense if I so request.

_____
(Signature of Parent)

APPENDIX F

SAMPLE FORM

Request to the State Educational Agency for Assistance
with Transfer Students and Notification of the Results

Requestor:

(Local Education Agency) _____ (Special Education Director) _____

(Principal) _____

Transfer Student:

(Student's Name) _____ (Present Address) _____

Type of Request:

Student has enrolled in the LEA above, Assistance is needed because of the following situation: (Check the appropriate boxes)

☐ Previous school is unknown. Information is needed. Please request assistance from all states in our region and the BIA in identifying previous school.

☐ In-state previous school is known _____ (Name), _____ (Address)
No response to requests for information.

☐ Out-of-State previous school is known. _____ (Name), _____ (Address)
No response to requests for information.

Student has been absent from the LEA named above for _____ days.

☐ No information available. Please request assistance from all states in our region and the BIA to assist in finding this student.

Contact Person:

ANY PERSON WITH INFORMATION REGARDING THE STUDENT NAMED ABOVE PLEASE CONTACT:

_____ (Name), _____ (Position), _____ (Address)

THE PERSON FROM AN LEA ANSWERING THIS REQUEST MUST NOTIFY HIS STATE EDUCATIONAL AGENCY THAT A RESPONSE HAS BEEN MADE. SIGN THIS FORM AND SEND A COPY TO THE LEA CONTACT PERSON WHO MADE THE REQUEST AND A COPY TO YOUR STATE EDUCATIONAL AGENCY, SPECIAL EDUCATION DIRECTOR. THANK YOU.

(State Special Education Director) _____ (State or BIA) _____

(Signature of Person Answering Request) _____ (State or BIA) _____

(LEA) _____ (Address) _____

APPENDIX G

SAMPLE FORM

Notification to New School of Attendance
of Records Available at Previous School of
Attendance, via the Parent

Dear Principal:

_____ has been attending _____ at _____
(Student's Name) (School) (Address)

for _____. Records are available at our school which contain information that should be
(Length of Time)
helpful to your staff in developing an individualized educational program. Copies can be sent to you if you wish to make a formal request to receive them.

To expedite the transfer of the information you are welcome to review the list below and check those records for which you are requesting a copy, sign the assurance statement and send to the address below.

Records	Please Check for a Copy	Records	Please Check for a Copy
_____	/ /	_____	/ /
_____	/ /	_____	/ /
_____	/ /	_____	/ /
_____	/ /	_____	/ /

Other Information Requested: _____

_____

Assurance Statement

In making this request, the undersigned does agree that the information received shall be used only by the professional school staff assigned to work with the student in his/her educational program and shall not be released to any other party without the written consent of the parent.

Date Requested _____ (Sig.) _____
(Principal)

_____ _____
(School) (Address)

_____

Return this form to: _____ _____
(Principal) (School)

_____ _____
(LEA) (Address)

_____

APPENDIX H

SAMPLE FORM

Notification to Parent of Record
Transfer Completed

Dear Parent:

This is to notify you that the following information from your son's/daughter's, _____ (Name),

school record was transferred to _____ (Person or Agency) at _____ (Address)

on _____ (Date).

Records	Reason for Transfer
_____	_____
_____	_____
_____	_____

The school district has on file an assurance agreement from the requestor that the information recived will only be used by the person or agency named above and only for the reasons stated.

According to the "Family Educational Rights and Privacy Act" of 1974, this information may be transferred for the purpose so stated above without parental consent, but you have the right to be notified of that transfer, to review the records transferred, to receive a copy on request at your own expense and to request a hearing to challenge any of the content, if you so wish.

If you wish further information, please contact:

_____ (Principal) _____ (Address) _____ (Local Education Agency)

Sincerely,

APPENDIX I

SAMPLE FORM

Record of Access
(To be placed inside the student's school record file)

Requestor (Name or Agency)	Date of Request	Records Requested	Method of Access (C-Copy; E-Examine; V-Verbal)	Purpose	Date Request Filled	Notified Parents (Date)

APPENDIX J

Rules and Regulations:

Privacy Rights of Parents and Students (Family Educational Rights and Privacy Act)

PART 99—PRIVACY RIGHTS OF PARENTS AND STUDENTS

Subpart A—General

Sec.
99.1 Applicability of part.
99.2 Purpose.
99.3 Definitions.
99.4 Student rights.
99.5 Formulation of institutional policy and procedures.
99.6 Annual notification of rights.
99.7 Limitation on waivers.
99.8 Fees.

Subpart B—Inspection and Review of Education Records

Sec.
99.11 Right to inspect and review education records.
99.12 Limitations on right to inspect and review education records at the postsecondary level.
99.13 Limitation on destruction of education records.

Subpart C—Amendment of Education Records

99.20 Request to amend education records.
99.21 Right to a hearing.
99.22 Conduct of the hearing.

Subpart D—Disclosure of Personally Identifiable Information From Education Records

99.30 Prior consent for disclosure required.
99.31 Prior consent for disclosure not required.
99.32 Record of disclosures required to be maintained.
99.33 Limitations on redisclosure.
99.34 Conditions for disclosure to officials of other schools or school systems.
99.35 Disclosure to certain Federal and State officials for Federal program purposes.
99.36 Conditions for disclosure in health or safety emergencies.
99.37 Conditions for disclosure of directory information.

Subpart E—Enforcement

99.60 Office and review board.
99.61 Conflict with State or local law.
99.62 Reports and records.
99.63 Complaint procedure.
99.64 Termination of funding.
99.65 Hearing procedures.
99.66 Hearing before Panel or a Hearing Officer.
99.67 Initial decision; final decision.

SOURCE: 41 FR 24670, June 17, 1976, unless otherwise noted.

AUTHORITY: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g).

Subpart A—General

§ 99.1 Applicability of part.

(a) This part applies to all educational agencies or institutions to which funds are made available under any Federal [program for which the U.S. Commissioner of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.]

(20 U.S.C. 1230, 1232g)

(b) This part does not apply to an educational agency or institution solely because students attending that nonmonetary agency or institution receive benefits under one or more of the Federal programs referenced in paragraph (a) of this section, if no funds under those programs are made available to the agency or institution itself.

(c) For the purposes of this part, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in paragraph (a) of this section: (1) Are provided to the agency or institution by grant, contract, subgrant, or subcontract, or (2) are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Basic Educational Opportunity Grants Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(20 U.S.C. 1232g)

(d) Except as otherwise specifically provided, this part applies to education records of students who are or have been in attendance at the educational agency or institution which maintains the records.

(20 U.S.C. 1232g)

§ 99.2 Purpose.

The purpose of this part is to set forth requirements governing the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(20 U.S.C. 1232g)

§ 99.3 Definitions.

As used in this Part:

"Act" means the General Education Provisions Act, Title IV of Pub. L. 90-247, as amended.

"Attendance" at an agency or institution includes, but is not limited to: (a) attendance in person and by correspondence, and (b) the period during which a person is working under a work-study program.

"Commissioner" means the U.S. Commissioner of Education.

(20 U.S.C. 1232g)

"Directory information" includes the following information relating to a student: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and

awards received, the most recent previous educational agency or institution attended by the student, and other similar information.
(20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.
(20 U.S.C. 1232g(b)(1))

"Educational institution" or "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any Federal program referenced in § 99.1(a). The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.
(20 U.S.C. 1232g(a)(3))

"Education records" (a) means those records which: (1) Are directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

(i) Are in the sole possession of the maker thereof, and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) Maintained apart from the records described in paragraph (a) of this definition;

(ii) Maintained solely for law enforcement purposes, and

(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction; *Provided*, That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

(3)(i) Records relating to an individual who is employed by an educational agency or institution which:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee, and

(C) Are not available for use for any other purpose.

(ii) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.

(4) Records relating to an eligible student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;

(ii) Created, maintained, or used only in connection with the provision of treatment to the student, and

(iii) Not disclosed to anyone other than individuals providing the treatment; *Provided*, That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

(5) Records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.
(20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has attained eighteen years of age, or is attending an institution of postsecondary education.
(20 U.S.C. 1232g(d))

"Financial Aid", as used in § 99.31(a)(4), means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the

individual's attendance at an educational agency or institution.
(20 U.S.C. 1232g(b)(1)(D))

"Institution of postsecondary education" means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under State law.
(20 U.S.C. 1232g(d))

"Panel" means the body which will adjudicate cases under procedures set forth in §§ 99.65–99.67.

"Parent" includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the agency or institution has been provided with evidence that there is a State law or court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

"Party" means an individual, agency, institution or organization.
(20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable" means that the data or information includes (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or student number, (d) a list of personal characteristics which would make the student's identity easily traceable, or (e) other information which would make the student's identity easily traceable.
(20 U.S.C. 1232g)

"Record" means any information or data recorded in any medium, including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.
(20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Health, Education, and Welfare.
(20 U.S.C. 1232g)

"Student" (a) includes any individual with respect to whom an educational agency or institution maintains education records.

(b) The term does not include an individual who has not been in attendance at an educational agency or institution. A person who has applied for admission to, but has never been in attendance at a component unit of an institution of postsecondary education (such as the various colleges or schools which comprise a university), even if that individual is or has been in attendance at another component unit of that institution of postsecondary education, is not considered to be a student with respect to the component to which an application for admission has been made.
(20 U.S.C. 1232g(a)(5))

§ 99.4 Student rights.

(a) For the purposes of this part, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student.

(b) The status of an eligible student as a dependent of his or her parents for the purposes of § 99.31(a)(8) does not otherwise affect the rights accorded to and the consent required of the eligible student by paragraph (a) of this section.
(20 U.S.C. 1232g(d))

(c) Section 438 of the Act and the regulations in this part shall not be construed to preclude educational agencies or institutions from according to students rights in addition to those accorded to parents of students.

§ 99.5 Formulation of institutional policy and procedures.

(a) Each educational agency or institution shall, consistent with the minimum requirements of section 438 of the Act and this part, formulate and adopt a policy of—

(1) Informing parents of students or eligible students of their rights under § 99.6;

(2) Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with § 99.11, including at least:

(i) A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

(ii) With an understanding that it may not deny access to an education record, a description of the circumstances in

90-003—76——23

which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

(iii) A schedule of fees for copies, and

(iv) A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records;

(3) Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by §§ 99.31 and 99.37; the policy shall include, at least: (i) A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under § 99.31 (a)(1) and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest", and (ii) a specification of the personally identifiable information to be designated as directory information under § 99.37;

(4) Maintaining the record of disclosures of personally identifiable information from the education records of a student required to be maintained by § 99.32, and permitting a parent or an eligible student to inspect that record;

(5) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing under Subpart C, and permitting the parent of a student or an eligible student to place a statement in the education records of the student as provided in § 99.21(c);

(b) The policy required to be adopted by paragraph (a) of this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

(20 U.S.C. 1232g (e) and (f))

§ 99.6 Annual notification of rights.

(a) Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:

(1) Their rights under section 438 of the Act, the regulations in this part, and the policy adopted under § 99.5; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained; and

(2) The right to file complaints under § 99.63 concerning alleged failures by the educational agency or institution to comply with the requirements of section 438 of the Act and this part.

(b) Agencies and institutions of elementary and secondary education shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

(20 U.S.C. 1232g(e))

§ 99.7 Limitations on waivers.

(a) Subject to the limitations in this section and § 99.12, a parent of a student or a student may waive any of his or her rights under section 438 of the Act or this part. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

(b) An educational agency or institution may not require that a parent of a student or student waive his or her rights under section 438 of the Act or this part. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

(c) An individual who is an applicant for admission to an institution of postsecondary education or is a student in attendance at an institution of postsecondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation described in § 99.12(a)(3) except that the waiver may apply to confidential letters and statements only if: (1) The applicant or student is, upon request, notified of the names of all individuals providing the letters or statements; (2) the letters or statements are used only for the purpose for which they were originally intended, and (3) such waiver is not required by the agency or institution as a condition of admission to or receipt of any other service or benefit from the agency or institution.

(d) All waivers under paragraph (c) of this section must be executed by the individual, regardless of age, rather than by the parent of the individual.

(e) A waiver under this section may be made with respect to specified classes of: (1) Education records, and (2) persons or institutions.

(f)(1) A waiver under this section may be revoked with respect to any actions occurring after the revocation.

(2) A revocation under this paragraph must be in writing.

(3) If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

(20 U.S.C. 1232g(a)(1) (B) and (C))

§ 99.8 Fees.

(a) An educational agency or institution may charge a fee for copies of education records which are made for the parents of students, students, and eligible students under section 438 of the Act and this part; *Provided*, That the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(20 U.S.C. 1232g(a)(1))

Subpart B—Inspection and Review of Education Records

§ 99.11 Right to inspect and review education records.

(a) Each educational agency or institution, except as may be provided by § 99.12, shall permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution, to inspect and review the education records of the student. The agency or institution shall comply with a request within a reasonable period of time, but in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under paragraph (a) of this section includes:

(1) The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

(2) The right to obtain copies of the records from the educational agency or institution where failure of the agency or institution to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.

(c) An educational agency or institution may presume that either parent of the student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

§ 99.12 Limitations on right to inspect and review education records at the postsecondary level.

(a) An institution of postsecondary education is not required by section 438 of the Act or this part to permit a student to inspect and review the following records:

(1) Financial records and statements of their parents or any information contained therein;

(2) Confidential letters and confidential statements of recommendation which were placed in the education records of a student prior to January 1, 1975; *Provided*, That:

(i) The letters and statements were solicited with a written assurance of confidentiality, or sent and retained with a documented understanding of confidentiality, and

(ii) The letters and statements are used only for the purposes for which they were specifically intended;

(3) Confidential letters of recommendation and confidential statements of recommendation which were placed in the education records of the student after January 1, 1975:

(i) Respecting admission to an educational institution;

(ii) Respecting an application for employment, or

(iii) Respecting the receipt of an honor or honorary recognition; *Provided*, That the student has waived his or her right to inspect and review those letters and statements of recommendation under § 99.7(c).

(20 U.S.C. 1232g(a)(1)(B))

(b) If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information which pertains to that student.

(20 U.S.C. 1232g(a)(1)(A))

§ 99.13 Limitation on destruction of education records.

An educational agency or institution is not precluded by section 438 of the Act or this part from destroying education records, subject to the following exceptions:

(a) The agency or institution may not destroy any education records if there is

an outstanding request to inspect and review them under § 99.11;

(b) Explanations placed in the education record under § 99.21 shall be maintained as provided in § 99.21(d), and

(c) The record of access required under § 99.32 shall be maintained for as long as the education record to which it pertains is maintained.

(20 U.S.C. 1232g(f))

Subpart C—Amendment of Education Records

§ 99.20 Request to amend education records.

(a) The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution which maintains the records amend them.

(b) The educational agency or institution shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request it shall so inform the parent of the student or the eligible student of the refusal, and advise the parent or the eligible student of the right to a hearing under § 99.21.

(20 U.S.C. 1232g(a)(2))

§ 99.21 Right to a hearing.

(a) An educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with § 99.22.

(b) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.

(c) If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

(d) Any explanation placed in the education records of the student under paragraph (c) of this section shall:

(1) Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

(2) If the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party, the explanation shall also be disclosed to that party.

(20 U.S.C. 1232g(a)(2))

§ 99.22 Conduct of the hearing.

The hearing required to be held by § 99.21(a) shall be conducted according to procedures which shall include at least the following elements:

(a) The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the hearing;

(b) The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

(c) The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under § 99.21, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(d) The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

(e) The decision of the agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

(20 U.S.C. 1232g(a)(2))

Subpart D—Disclosure of Personally Identifiable Information From Education Records

§ 99.30 Prior consent for disclosure required.

(a)(1) An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in § 99.31.

(2) Consent is not required under this section where the disclosure is to (i) the parent of a student who is not an eligible student, or (ii) the student himself or herself.

(b) Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

(c) The written consent required by paragraph (a) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

(1) A specification of the records to be disclosed,

(2) The purpose or purposes of the disclosure, and

(3) The party or class of parties to whom the disclosure may be made.

(d) When a disclosure is made pursuant to paragraph (a) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

20 U.S.C. 1232g(b)(1) and (b)(2)(A))

§ 99.31 Prior consent for disclosure not required.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is—

(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests;

(2) To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in § 99.34;

(3) Subject to the conditions set forth in § 99.35, to authorized representatives of:

(i) The Comptroller General of the United States,

(ii) The Secretary,

(iii) The Commissioner, the Director of the National Institute of Education, or the Assistant Secretary for Education, or

(iv) State educational authorities;

(4) In connection with financial aid for which a student has applied or which a student has received; *Provided*, That personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

(i) To determine the eligibility of the student for financial aid,

(ii) To determine the amount of the financial aid,

(iii) To determine the conditions which will be imposed regarding the financial aid, or

(iv) To enforce the terms or conditions of the financial aid;

(5) To State and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974. This subparagraph applies only to statutes which require that specific information be disclosed to State or local officials and does not apply to statutes which permit but do not require disclosure. Nothing in this paragraph shall prevent a State from further limiting the number or type of State or local officials to whom disclosures are made under this subparagraph;

(6) To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction; *Provided*, That the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals

other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to, Federal, State and local agencies, and independent organizations;

(7) To accrediting organizations in order to carry out their accrediting functions;

(8) To parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954;

(9) To comply with a judicial order or lawfully issued subpoena; *Provided*, That the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith; and

(10) To appropriate parties in a health or safety emergency subject to the conditions set forth in § 99.36.

(b) This section shall not be construed to require or preclude disclosure of any personally identifiable information from the education records of a student by an educational agency or institution to the parties set forth in paragraph (a) of this section.

(20 U.S.C. 1232g(b)(1))

§ 99.32 Record of disclosures required to be maintained.

(a) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

(1) The parties who have requested or obtained personally identifiable information from the education records of the student, and

(2) The legitimate interests these parties had in requesting or obtaining the information.

(b) Paragraph (a) of this section does not apply to disclosures to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student when the consent is specific with respect to the party or parties to whom the disclosure is to be made, disclosures to school officials under § 99.31(a)(1), or to disclosures of directory information under § 99.37.

(c) The record of disclosures may be inspected;

(1) By the parent of the student or the eligible student,

(2) By the school official and his or her assistants who are responsible for the custody of the records, and

(3) For the purpose of auditing the recordkeeping procedures of the educational agency or institution by the parties authorized in, and under the conditions set forth in § 99.31(a)(1) and (3).

(20 U.S.C. 1232g(b)(4)(A))

§ 99.33 Limitation on redisclosure.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not preclude an agency or institution from disclosing personally identifiable information under § 99.31 with the understanding that the information will be redisclosed to other parties under that section; *Provided*, That the recordkeeping requirements of § 99.32 are met with respect to each of those parties.

(c) An educational agency or institution shall, except for the disclosure of directory information under § 99.37, inform the party to whom a disclosure is made of the requirement set forth in paragraph (a) of this section.

(20 U.S.C. 1232g(b)(4)(B))

§ 99.34 Conditions for disclosure to officials of other schools and school systems.

(a) An educational agency or institution transferring the education records of a student pursuant to § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student, except:

(i) When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

(ii) When the agency or institution includes a notice in its policies and procedures formulated under § 99.5 that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer;

(2) Provide the parent of the student or the eligible student, upon request, with a copy of the education records which have been transferred; and

(3) Provide the parent of the student or the eligible student, upon request, with an opportunity for a hearing under Subpart C of this part.

(b) If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; *Provided*, That the disclosure meets the requirements of paragraph (a) of this section.

(20 U.S.C. 1232g(b)(1)(B))

§ 99.35 Disclosure to certain Federal and State officials for Federal program purposes.

(a) Nothing in section 438 of the Act or this part shall preclude authorized representatives of officials listed in § 99.31(a)(3) from having access to student and other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of or compliance with the Federal legal requirements which relate to these programs.

(b) Except when the consent of the parent of a student or an eligible student has been obtained under § 99.30, or when the collection of personally identifiable information is specifically authorized by Federal law, any data collected by officials listed in § 99.31(a)(3) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of or compliance with Federal legal requirements.

20 U.S.C. 1232g(b)(3))

§ 99.36 Conditions for disclosure in health and safety emergencies.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(1) The seriousness of the threat to the health or safety of the student or other individuals;

(2) The need for the information to meet the emergency;

(3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

(4) The extent to which time is of the essence in dealing with the emergency.

(c) Paragraph (a) of this section shall be strictly construed.

(20 U.S.C. 1232g(b)(1)(I))

§ 99.37 Conditions for disclosure of directory information.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information (as defined in § 99.3) under paragraph (c) of this section.

(b) An educational agency or institution may disclose directory information from the education records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (c) of this section.

(c) An educational agency or institution which wishes to designate directory information shall give public notice of the following:

(1) The categories of personally identifiable information which the institution has designated as directory information;

(2) The right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

(3) The period of time within which the parent of the student or the eligible

student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.
(20 U.S.C. 1232g(a)(5)(A) and (B))

Subpart E—Enforcement

§ 99.60 Office and review board.

(a) The Secretary is required to establish or designate an office and a review board under section 438(g) of the Act. The office will investigate, process, and review violations, and complaints which may be filed concerning alleged violations of the provisions of section 438 of the Act and the regulations in this part. The review board will adjudicate cases referred to it by the office under the procedures set forth in §§ 99.65–99.67.

(b) The following is the address of the office which has been designated under paragraph (a) of this section: The Family Educational Rights and Privacy Act Office (FERPA), Department of Health, Education, and Welfare, 330 Independence Ave. SW., Washington, D.C. 20201.
(20 U.S.C. 1232g(g))

§ 99.61 Conflict with State or local law.

An educational agency or institution which determines that it cannot comply with the requirements of section 438 of the Act or of this part because a State or local law conflicts with the provisions of section 438 of the Act or the regulations in this part shall so advise the office designated under § 99.60(b) within 45 days of any such determination, giving the text and legal citation of the conflicting law.
(20 U.S.C. 1232g(f))

§ 99.62 Reports and records.

Each educational agency or institution shall (a) submit reports in the form and containing such information as the Office of the Review Board may require to carry out their functions under this part, and (b) keep the records and afford access thereto as the Office or the Review Board may find necessary to assure the correctness of those reports and compliance with the provisions of sections 438 of the Act and this part.
(20 U.S.C. 1232g(f) and (g))

§ 99.63 Complaint procedure.

(a) Complaints regarding violations of rights accorded parents and eligible students by section 438 of the Act or the regulations in this part shall be submitted to the Office in writing.

(b)(1) The Office will notify each complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(2) The notification to the agency or institution under paragraph (b)(1) of this section shall include the substance of the alleged violation and the agency or institution shall be given an opportunity to submit a written response.

(c)(1) The Office will investigate all timely complaints received to determine whether there has been a failure to comply with the provisions of section 438 of the Act or the regulations in this part, and may permit further written or oral submissions by both parties.

(2) Following its investigation the Office will provide written notification of its findings and the basis for such findings, to the complainant and the agency or institution involved.

(3) If the Office finds that there has been a failure to comply, it will include in its notification under paragraph (c)(2) of this section, the specific steps which must be taken by the agency or educational institution to bring the agency or institution into compliance. The notification shall also set forth a reasonable period of time, given all of the circumstances of the case, for the agency or institution to voluntarily comply.

(d) If the educational agency or institution does not come into compliance within the period of time set under paragraph (c)(3) of this section, the matter will be referred to the Review Board for a hearing under §§ 99.64–99.67, inclusive.
(20 U.S.C. 1232g(f))

§ 99.64 Termination of funding.

If the Secretary, after reasonable notice and opportunity for a hearing by the Review Board, (1) finds that an educational agency or institution has failed to comply with the provisions of section 438 of the Act, or the regulations in this part, and (2) determines that compliance cannot be secured by voluntary means, he shall issue a decision, in writing, that no funds under any of the Federal programs referenced in § 99.1(a) shall be made available to that educational agency or institution (or, at the Secretary's discretion, to the unit of the educational agency or institution affected by the failure to comply) until there is no longer any such failure to comply.
(20 U.S.C. 1232g(f))

§ 99.65 Hearing procedures.

(a) *Panels.* The Chairman of the Review Board shall designate Hearing Panels to conduct one or more hearings under § 99.64. Each Panel shall consist of not less than three members of the Review Board. The Review Board may, at its discretion, sit for any hearing or class of hearings. The Chairman of the Review Board shall designate himself or any other member of a Panel to serve as Chairman.

(b) *Procedural rules.* (1) With respect to hearings involving, in the opinion of the Panel, no dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting his case at the option of the Panel (i) in whole or in part in writing or (ii) in an informal conference before the Panel which shall afford each party: (A) Sufficient notice of the issues to be considered (where such notice has not previously been afforded); and (B) an opportunity to be represented by counsel.

(2) With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall afford each party an opportunity, which shall include, in addition to provisions required by subparagraph (1)(ii) of this paragraph, provisions designed to assure to each party the following:

(i) An opportunity for a record of the proceedings;

(ii) An opportunity to present witnesses on the party's behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.
(20 U.S.C. 1232g(g))

§ 99.66 Hearing before Panel or a Hearing Officer.

A hearing pursuant to § 99.65(b)(2) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as a hearing examiner under 5 U.S.C. 3105.
(20 U.S.C. 1232g(g))

§ 99.67 Initial decision; final decision.

(a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.

(b) Copies of the initial decision shall be mailed promptly by the Panel to each party (or to the party's counsel), and to the Secretary with a notice affording the party an opportunity to submit written comments thereon to the Secretary within a specified reasonable time.

(c) The initial decision of the Panel transmitted to the Secretary shall become the final decision of the Secretary, unless, within 25 days after the expiration of the time for receipt of written comments, the Secretary advises the Review Board in writing of his determination to review the decision.

(d) In any case in which the Secretary modifies or reverses the initial decision of the Panel, he shall accompany that action with a written statement of the grounds for the modification or reversal, which shall promptly be filed with the Review Board.

(e) Review of any initial decision by the Secretary shall be based upon the decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel, to the proceedings.

(f) No decision under this section shall become final until it is served upon the educational agency or institution involved or its attorney.
(20 U.S.C. 1232g(g))

113 119

APPENDIX K

Rules and Regulations:

Privacy Act of 1974

Subpart D—Privacy Act

AUTHORITY: 5 U.S.C. 301, 552 and 552a; 31 U.S.C. 483a; and 43 U.SC 1460

SOURCE: 40 FR 44505, Sept. 26, 1975, unless otherwise noted.

§ 2.45 Purpose and scope.

This subpart contains the regulations of the Department of the Interior implementing section 3 of the Privacy Act. Sections 2.47 through 2.57 describe the procedures and policies of the Department concerning maintenance of records which are subject to the Act. Sections 2.60 through 2.66 describe the procedure under which an individual may determine whether a system of records subject to the Act contains a record relating to him and the procedure under which he may seek access to that record, if one should exist. Sections 2.70 through 2.77 describe the procedure under which an individual may petition for amendment of a record subject to the Act relating to him. Section 2.79 lists records systems partially exempt from the Act.

§ 2.46 Definitions.

(a) *Act.* As used in this subpart, "Act" means section 3 of the Privacy Act, 5 U.S.C. 552a.

(b) *Bureau.* For purposes of this subpart, a "bureau" is any constituent bureau or office of the Department, including the Office of the Secretary and any other Departmental office.

(c) *Individual.* As used in this subpart, "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(d) *Maintain.* As used in this subpart, the term "maintain" includes maintain, collect, use or disseminate.

(e) *Record.* As used in this subpart, "record" means any item, collection, or grouping of information about an individual that is maintained by the Department or a bureau thereof, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph.

(f) *System of records.* As used in this subpart, "system of records" means a group of any records under the control of the Department or a bureau thereof from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(g) *Medical records.* As used in this subpart, "medical records" means records which relate to the identification, prevention, cure or alleviation of any disease, illness or injury including psychological disorders, alcoholism and drug addiction.

(h) *Civil Service Commission personnel records.* As used in this subpart, "Civil Service Commission personnel records" means records maintained for the Civil Service Commission by the Department and used for personnel management programs or processes such as staffing, employee development, retirement, and grievances and appeals.

(i) *Statistical records.* As used in this subpart, "statistical records" means records in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.

(j) *Routine use.* As used in this subpart, "routine use" means a use of a record for a purpose which is compatible with the purpose for which it was collected.

(k) *System notice.* As used in this subpart, "system notice" means the notice describing a system of records required by 5 U.S.C. 552a(e)(4) to be published annually in the FEDERAL REGISTER.

(l) *System manager.* As used in this subpart, "system manager" means the official designated in a system notice as having administrative responsibility for a system of records.

(m) *Departmental Privacy Act Officer.* As used in this subpart, "Departmental Privacy Act Officer" means the official in the Office of the Assistant Secretary-Management charged with responsibility for assisting the Assistant Secretary-Management in carrying out the functions which he is assigned in this subpart and for coordinating the activities of the bureaus of the Department in carrying out the functions which they are assigned in this subpart.

(n) *Bureau Privacy Act Officer.* As used in this sub-part, "Bureau Privacy Act Officer" means the official within each bureau assigned responsibility for bureau implementation of the Act and the regulations of this subpart.

§ 2.47 Records subject to Privacy Act.

The Privacy Act applies to all "records," as that term is defined in § 2.46(e), which the Department maintains in a "system of records," as that term is defined in § 2.46(f).

§ 2.48 Standards for maintenance of records subject to the Act.

(a) *Content of records.* Records subject to the Act shall contain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order of the President.

(b) *Standards of accuracy.* Records subject to the Act which are used in making any determination about any individual shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making the determination.

(c) *Collection of information.* (1) Information which may be used in making determinations about an individual's rights, benefits, and privileges under Federal programs shall, to the greatest extent practicable, be collected directly from that individual.

(2) In deciding whether collection of information from an individual, as opposed to a third party source, is practicable, the following factors, among others, may be considered:

(i) Whether the nature of the information sought is such that it can only be obtained from a third party;

(ii) Whether the cost of collecting the information from the individual is unreasonable when compared with the cost of collecting it from a third party;

(iii) Whether there is a risk that information collected from third parties, if inaccurate, could result in an adverse determination to the individual concerned;

(iv) Whether the information, if supplied by the individual, would have to be verified by a third party; or

(v) Whether provisions can be made for verification, by the individual, of information collected from third parties.

(d) *Advice to individuals concerning uses of information.* (1) Each individual who is asked to supply information about himself which will be added to a system of records shall be informed of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information.

(2) At a minimum, the notice to the individual must state:

(i) The authority (whether granted by statute or Executive Order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(ii) The principal purpose or purposes for which the information is intended to be used;

(iii) The routine uses which may be made of the information; and

(iv) The effects on him, if any, of not providing all or any part of the requested information.

(3)(i) When information is collected on a standard form, the notice to the individual shall be on the form or on a tear-off sheet attached to the form or on a separate sheet, whichever is most practical.

(ii) When information is collected by an interviewer, the interviewer shall provide the individual with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests that a copy be mailed to him.

(iii) An individual may be asked to acknowledge, in writing, that he has been afforded the notice required by this section.

(e) *Records concerning activity protected by the First Amendment.* No record may be maintained describing how any individual exercises rights guaranteed by the First Amendment to the Constitution unless (1) expressly authorized by statute or by the individual about whom the record is maintained or (2) pertinent to and within the scope of an authorized law enforcement activity.

§ 2.49 [Reserved]

§ 2.50 Federal Register notices describing systems of records.

(a) The Privacy Act requires annual publication of a notice in the FEDERAL REGISTER describing each system of records subject to the Act. 5 U.S.C. 552a(e)(4).

(b) Each bureau shall notify the Departmental Privacy Act Officer, no later than August 1 of each year, of any modifications or amendments which are required in the then-current notice describing the system for which he is responsible.

(c) A bureau desiring to establish a new system of records or a new use for an existing system of records shall notify the Departmental Privacy Act Officer, no fewer than seventy-five (75) calendar days in advance.

§ 2.51 Assuring integrity of records.

(a) *Statutory requirement.* The Privacy Act requires that records subject to the Act be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. 5 U.S.C. 552a(e)(10).

(b) *Records maintained in manual form.* When maintained in manual form, records subject to the Privacy Act shall be maintained, at a minimum, subject to the following safeguards, or safeguards affording comparable protection:

(1) Areas in which the records are maintained or regularly used shall be posted with an appropriate warning stating that access to the records is limited to authorized persons. The warning shall also summarize the requirements of § 2.52 and state that the Privacy Act contains a criminal penalty for the unauthorized disclosure of records to which it applies.

(2) During working hours, (i) the area in which the records are maintained or regularly used shall be occupied by authorized personnel or (ii) access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During non-working hours, access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(4) Where a locked room is the method of security provided for a system, the bureau responsible for the system shall, no later than December 31, 1976, supplement that security by (i) providing lockable file cabinets or containers for the records or (ii) changing the lock or locks for the room so that they may not be opened with a master key. For the purposes of this paragraph, a master key is a key which may be used to open rooms other than the room containing records subject to the Privacy Act, unless those rooms are utilized by officials or employees authorized to have access to the records subject to the Privacy Act.

(c) *Records maintained in computerized form.* When maintained in computerized form, records subject to the Privacy Act shall be maintained, at a minimum, subject to safeguards based on those recommended in the National Bureau of Standard's booklet "Computer Security Guidelines for Implementing the Privacy Act of 1974" (May 30, 1975), and any supplements thereto, which are adequate and appropriate to assuring the integrity of records in the system.

(d) *Civil Service Commission personnel records.* A system of records made up of Civil Service Commission personnel records shall be maintained under the security requirements set out in 5 CFR 293.108.[1]

(e) *Bureau responsibility.* (1) The bureau responsible for a system of records shall be responsible for assuring that specific procedures are developed to assure that the records in the system for which it is responsible are maintained with security meeting the requirements of the Act and this section.

(2) These procedures shall be in writing and shall be posted or otherwise periodically brought to the attention of employees working with the records contained in the system.

[1] [Text of 5 CFR 293.108 will be set out when that section is finalized by the Civil Service Commission.]

§ 2.52 Conduct of employees.

(a) *Handling of records subject to the Act.* Employees whose duties require handling of records subject to the Privacy Act shall, at all times, take care to protect the integrity, security and confidentiality of these records.

(b) *Disclosure of records.* No employee of the Department may disclose records subject to the Privacy Act unless disclosure is permitted under § 2.56 or is to the individual to whom the record pertains.

(c) *Alteration of records.* No employee of the Department may alter or destroy a record subject to the Privacy Act unless (1) such alteration or destruction is properly undertaken in the course of the employee's regular duties or (2) such alteration or destruction is required by a decision under §§ 2.70–2.75 or the decision of a court of competent jurisdiction.

(d) *Bureau responsibility.* The bureau responsible for a system of records shall be responsible for assuring that employees with access to the system are made aware of the requirements of this section and of 5 U.S.C. 552a(i)(1), which imposes criminal penalties for knowingly and willfully disclosing a record about an individual without the written request or consent of that individual unless disclosure is permitted under one of the exceptions listed in § 2.56 (b) and (c).

§ 2.53 Government contracts.

(a) *Required contract provisions.* When a contract provides for the operation by or on behalf of the Department of a system of records to accomplish a Department function, the contract shall, consistent with the Department's authority, cause the requirements of 5 U.S.C. 552a and the regulations contained in this subpart to be applied to such system.

(b) *System manager.* The head of the bureau responsible for the contract shall designate a regular employee of the bureau to be the manager for a system of records operated by a contractor.

§§ 2.54—2.55 [Reserved]

§ 2.56 Disclosure of Records.

(a) *Prohibition of disclosure.* No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) *General exceptions.* The prohibition contained in paragraph (a) does not apply where disclosure of the record would be:

(1) To those officers or employees of the Department who have a need for the record in the performance of their duties; or

(2) required by the Freedom of Information Act, 5 U.S.C. 552.

(c) *Specific exceptions.* The prohibition contained in paragraph (a) does not apply where disclosure of the record would be:

(1) for a routine use as defined in § 2.46(j) which has been described in a systems notice published in the FEDERAL REGISTER;

(2) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code.

(3) to a recipient who has provided the System Manager responsible for the system in which the record is maintained with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(4) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(5) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Department specifying the particular portion desired and the law enforcement activity for which the record is sought;

(6) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(7) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(8) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(9) pursuant to the order of a court of competent jurisdiction.

(d) *Reviewing records prior to disclosure.* (1) Prior to any disclosure of a record about an individual, unless disclosure is required by the Freedom of Information Act, reasonable efforts shall be made to assure that the records are accurate, complete, timely and relevant for agency purposes.

(2) When a record is disclosed in connection with a Freedom of Information request made under Subpart B of this part and it is appropriate and administratively feasible to do so, the requester shall be informed of any information known to the Department indicating that the record may not be fully accurate, complete, or timely.

§ 2.57 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the specific exceptions provided by § 2.56 (c), an accounting shall be made.

(2) The accounting shall record (i) the date, nature, and purpose of each disclosure of a record to any person or to another agency and (ii) the name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section shall be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accountings.* (1) Except for accountings of disclosures made under § 2.56(c)(5), accountings of all disclosures of a record shall be made available to the individual to whom the record relates at his request.

(2) An individual desiring access to accountings of disclosures of a record pertaining to him shall submit his request by following the procedures of § 2.63.

(c) *Notification of disclosure.* When a record is disclosed pursuant to § 2.56(c)(9) as the result of the order of a court of competent jurisdiction, reasonable efforts shall be made to notify the individual to whom the record pertains as soon

as the order becomes a matter of public record.

§§ 2.58–2.59 [Reserved]

§ 2.60 Request for notification of existence of records: Submission.

(a) *Submission of requests.* (1) (i) An individual desiring to determine under the Privacy Act whether a system of records contains records pertaining to him shall address his inquiry to the system manager having responsibility for the system unless the system notice describing the system prescribes or permits submission to some other official or officials.

(ii) If a system notice describing a system requires that an individual contact more than two officials concerning the existence of records in the system, an individual desiring to determine whether the system contains records pertaining to him may contact the system manager for assistance in determining which official is most likely to be in possession of records pertaining to that individual.

(2) If an individual desires to determine whether records pertaining to him are maintained in two or more systems, he shall make a separate inquiry concerning each system.

(b) *Form of request.* (1) An inquiry to determine whether a system of records contains records pertaining to an individual shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend "PRIVACY ACT INQUIRY."

(3) The request shall state that the individual is seeking information concerning records pertaining to himself and shall supply such additional identifying information, if any, as is called for in the system notice describing the system.

(4) If an individual has reason to believe that information pertaining to him or her may be filed under a name other than the name he or she is currently using (e.g., a maiden name), he or she shall include this information in the request.

§ 2.61 Requests for notification of existence of records: Action on.

(a) *Decisions on Request.* (1) An individual inquiring to determine whether a system of records contains records pertaining to him shall be promptly advised whether or not the system does contain records pertaining to him unless (i) the records were compiled in reasonable anticipation of a civil action or proceeding or (ii) the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking.

(2) If the records were compiled in reasonable anticipation of a civil action or proceeding or the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking, the individual will be promptly notified that he is not entitled to notification of whether the system contains records pertaining to him.

(b) *Authority to deny requests.* A decision to deny a request for notification of the existence of records shall be made by the system manager responsible for the system of records concerning which inquiry has been made and shall be concurred in by the bureau Privacy Act officer for the bureau which maintains the system, provided, however that the head of a bureau may, in writing, require (1) that the decision be made by the bureau Privacy Act officer and/or (2) that his (the bureau head's) own concurrence in the decision be obtained.

(c) *Form of decision.* (1) No particular form is required for a decision informing and individual whether or not a system of records contains records pertaining to him.

(2) A decision declining to inform an individual whether or not a system of records contains records pertaining to him shall be in writing and shall state the basis for denial of the request and shall advise the individual that he may appeal the declination to the Assistant Secretary-Management pursuant to § 2.65 by writing to the Privacy Act Officer, Office of the Assistant Secretary-Management, U.S. Department of the Interior, Washington, D.C. 20240, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

§ 2.62 Requests for access to records.

The Privacy Act permits an individual, upon his request, to gain access to his record or to any information pertaining to him which is contained in a system and to review the record and have a copy made of all or any portion thereof in a form comprehensive to him. 5 U.S.C. 552a(d)(1). A request for access shall be

submitted in accordance with the procedures in this subpart.

§ 2.63 Requests for access to records: Submission.

(a) *Submission of requests.* (1) (i) Requests for access to records shall be submitted to the system manager having responsibility for the system in which the records are maintained unless the system notice describing the system prescribes or permits submission to some other official or officials.

(ii) If a system notice describing a system requires that an individual contact more than two officials concerning access to records in the system, an individual desiring to request access to records pertaining to him may contact the system manager for assistance in determining which official is most likely to be in custody of records pertaining to that individual.

(2) If an individual desires access to records maintained in two or more separate systems, he shall submit a separate request for access to the records in each system.

(b) *Form of request.* (1) A request for access to records subject to the Privacy Act shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend "PRIVACY ACT REQUEST FOR ACCESS."

(3) The request shall specify whether the requester seeks all of the records contained in the system which relate to him or only some portion thereof. If the requester seeks only a portion of the records which relate to him, the request shall reasonably describe the specific record or records sought.

(4) If the requester seeks to have copies of the requested records made, the request shall state the maximum amount of copying fees which the requester is willing to pay. A request which does not state the amount of fees the requester is willing to pay will be treated as a request to inspect the requested records. Requesters are further notified that under § 2.64(d) the failure to state willingness to pay fees as high as are anticipated by the Department will delay processing of a request.

(5) The request shall supply such identifying information, if any, as is called for in the system notice describing the system.

(6) Requests failing to meet the requirements of this paragraph shall be returned to the requester with a written notice advising the requester of the deficiency in the request.

§ 2.64 Requests for access to records: Initial decision.

(a) *Decisions on requests.* A request made under this subpart for access to a record shall be granted promptly unless (1) the record was compiled in reasonable anticipation of a civil action or proceeding or (2) the record is contained in a system of records which has been excepted from the access provisions of the Privacy Act by rulemaking.

(b) *Authority to deny requests.* A decision to deny a request for access under this subpart shall be made by the system manager responsible for the system of records in which the requested record is located and shall be concurred in by the bureau Privacy Act officer for the bureau which maintains the system, provided, however, that the head of a bureau may, in writing, require (1) that the decision be made by the bureau Privacy Act officer and/or (2) that his (the bureau head's) own concurrence in the decision be obtained.

(c) *Form of decision.* (1) No particular form is required for a decision granting access to a record. The decision shall, however, advise the individual requesting the record as to where and when the record is available for inspection or, as the case may be, where and when copies will be available. If fees are due under § 2.64(d), the individual requesting the record shall also be notified of the amount of fees due or, if the exact amount has not been determined, the approximate amount of fees due.

(2) A decision denying a request for access, in whole or part, shall be in writing and shall state the basis for denial of the request. The decision shall also contain a statement that the denial may be appealed to Assistant Secretary-Management pursuant to § 2.65 by writing to Privacy Act Officer, Office of Assistant Secretary-Management, U.S. Department of the Interior, Washington, D.C. 20240, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

(d) *Fees.* (1) No fees may be charged for the cost of searching for or reviewing a record in response to a request made under § 2.63.

(2) Fees for copying a record in response to a request made under § 2.63 shall be charged in accordance with the schedule of charges contained in Appendix A to this Part, unless the official responsible for processing the request determines that, in his opinion, reduction or waiver of fees is appropriate.

(3) Where it is anticipated that fees chargeable in connection with a request will exceed the amount the person submitting the request has indicated he is willing to pay, the official processing the request shall notify the requester and shall not complete processing of the request until the requester has agreed, in writing, to pay fees as high as are anticipated.

§ 2.65 Requests for notification of existence of records and for access to records: Appeals.

(a) *Right of appeal.* If an individual has been notified that he is not entitled to notification of whether a system of records contains records pertaining to him or has been denied access, in whole or part, to a requested record, that individual may appeal to the Assistant Secretary-Management.

(b) *Time for appeal.* (1) An appeal must be received by the Privacy Act Officer no later than twenty (20) days (Saturdays, Sundays and public legal holidays excepted) after the date of the initial decision on a request.

(2) The Assistant Secretary-Management may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the initial decision of the request.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial request and the decision on the request.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the initial request to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Office of the Assistant Secretary-Management, U.S. Department of the Interior, Washington, D.C. 20240.

(d) *Action on appeals.* (1) Appeals from decisions on initial requests made pursuant to §§ 2.61 and 2.63 shall be decided for the Department by the Assistant Secretary-Management after consultation with the Solicitor.

(2) The decision on an appeal shall be in writing and shall state the basis for the decision.

§ 2.66 Requests for access to records: Special situations.

(a) *Medical records.* (1) Medical records shall be disclosed to the individual to whom they pertain unless it is determined, in consultation with a medical doctor, that disclosure should be made to a medical doctor of the individual's choosing.

(2) If it is determined that disclosure of medical records directly to the individual to whom they pertain could have an adverse effect on that individual, the individual may designate a medical doctor to recieve the records and the records will be disclosed to that doctor.

(b) *Inspection in presence of third party.* (1) An individual wishing to inspect records pertaining to him which have been opened for his inspection may, during the inspection, be accompanied by a person of his own choosing.

(2) When such a procedure is deemed appropriate, the individual to whom the records pertain may be required to furnish a written statement authorizing discussion of his record in the accompanying person's presence.

§§ 2.67–2.69 [Reserved]

§ 2.70 Amendment of records.

The Privacy Act permits an individual to request amendment of a record pertaining to him if he believes the record is not accurate, relevant, timely or complete. 5 U.S.C. 552a (d)(2). A request for amendment of a record shall be submitted in accordance with the procedures in this subpart.

§ 2.71 Petitions for amendment: Submission and form.

(a) *Submission of petitions for amendment.* (1) A request for amendment of a record shall be submitted to the system manager for the system of records containing the record unless the system notice describing the system prescribes or permits submission to a different official or officials. If an individual wishes to request amendment of records located in more than one system, a separate petition must be submitted to each system manager.

(2) A petition for amendment of a record may be submitted only if the individual submitting the petition has previously requested and been granted access to the record and has inspected or been given a copy of the record.

(b) *Form of petition.* (1) A petition for amendment shall be in writing and shall specifically identify the record whose amendment is sought.

(2) The petition shall state, in detail, the reasons why the petitioner believes the record, or the portion thereof objectionable to him, is not accurate, relevant, timely or complete. Copies of documents or evidence relied upon in support of these reasons shall be submitted with the petition.

(3) The petition shall state, specifically and in detail, the changes sought in the record. If the changes involve rewriting of the record or portions thereof or involve adding new language to the record, the petition shall propose specific language to implement the changes.

§ 2.72 Petitions for amendment: Processing and initial decision.

(a) *Decisions on petitions.* In reviewing a record in response to a petition for amendment, the accuracy, relevance, timeliness and completeness of the record shall be assessed against the criteria set out in § 2.48. In addition, personnel records shall be assessed against the criteria for determining record quality published in the Federal Personnel Manual and the Departmental Manual addition thereto.

(b) *Authority to decide.* An initial decision on a petition for amendment may be made only by the system manager responsible for the system of records containing the challenged record and must, if he declines to amend the record as requested, be concurred in by the bureau Privacy Act officer for the bureau which maintains the system, provided, however, that the head of a bureau may, in writing, require (1) that the decision be made by the bureau Privacy Act officer and/or (2) that his (the bureau head's) own concurrence in the decision be obtained.

(c) *Acknowledgement of receipt.* Unless processing of a petition is completed within ten (10) days (Saturdays, Sundays and public legal holiday excepted), the receipt of the petition for amendment shall be acknowledged in writing by the system manager to whom it is directed.

(d) *Inadequate petitions.* (1) If a petition does not meet the requirements of § 2.71, the petitioner shall be so advised and shall be told what additional information must be submitted to meet the requirements of § 2.71.

(2) If the petitioner fails to submit the additional information within a reasonable time, his petition may be rejected. The rejection shall be in writing and shall meet the requirements of paragraph (c) of this section.

(e) *Form of decision.* (1) A decision on a petition for amendment shall be in writing and shall state concisely the basis for the decision.

(2) If the petitioned for amendment is rejected, in whole or part, the decision shall advise the petitioner that the rejection may be appealed to the Assistant Secretary-Management by writing to the Privacy Act Officer, Office of the Assistant Secretary-Management, U.S. Department of the Interior, Washington, D.C. 20240, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

(f) *Implementation of initial decision.* If a petitioned for amendment is accepted, in whole or part, the bureau maintaining the record shall:

(1) Correct the record accordingly and,

(2) Where an accounting of disclosures has been made pursuant to § 2.57 advise all previous recipients of the record that the correction was made and the substance of the correction.

§ 2.73 Petitions for amendments: Time limits for processing.

(a) *Acknowledgement of receipt.* The acknowledgement of receipt of a petition required by § 2.72(c) shall be dispatched not later than ten (10) days (Saturdays, Sundays and public legal holidays excepted) after receipt of the petition by the system manager responsible for the system containing the challenged record, unless a decision on the petition has been previously dispatched.

(b) *Decision on petition.* A petition for amendment shall be processed promptly. A determination whether to accept or reject the petitioned for amendment shall be made within no more than thirty (30) days (Saturdays, Sundays and public legal holidays excepted) after receipt of the petition by the system manager responsible for the system containing the challenged record.

(c) *Suspension of time limit.* The thirty (30) day time limit for a decision on a petition shall be suspended if it is necessary to notify the petitioner, pursuant to § 2.72(d), that additional information in support of the petition is required. Running of the thirty (30) day time limit shall resume on receipt of the additional information by the system manager responsible for the system containing the challenged record.

(d) *Extensions of time.* (1) The thirty (30) day time limit for a decision on a petition may be extended if the official responsible for making a decision on the petition determines that an extension is necessary for one of the following reasons:

(i) A decision on the petition requires analysis of voluminous record or records;

(ii) Some or all of the challenged records must be collected from facilities other than the facility at which the official responsible for making the decision is located.

(iii) Some or all of the challenged records are of concern to another bureau of the Department or another agency of the Federal Government whose assistance and views are being sought in processing the request.

(2) If the official responsible for making a decision on the petition determines that an extension is necessary, he shall promptly inform the petitioner of the extension and the date on which a decision is expected to be dispatched.

§ 2.74 Petitions for amendment: Appeals.

(a) *Right of appeal.* Where a petitioned-for amendment has been rejected, in whole or part, the individual submitting the petition may appeal the denial to Assistant Secretary-Management.

(b) *Time for appeal.* (1) An appeal must be received no later than twenty (20) days (Saturdays, Sundays and public legal holidays excepted) after the date of the decision on a petition.

(2) The Assistant Secretary-Management may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision on a petition.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial petition and the decision on that petition.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the petition to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Office of the Assistant Secretary-Management, U.S. Department of the Interior, Washington, D.C. 20240.

§ 2.75 Petitions for amendment: Action on appeals.

(a) *Authority.* Appeals from decisions on initial petitions for amendment shall be decided for the Department by the Assistant Secretary-Management, after consultation with the Solicitor, unless the record challenged by the initial petition is a Civil Service Commission personnel record maintained for the Commission by the Department. Appeals from decisions on initial petitions requesting amendment of Civil Service Commission records maintained for the Commission by the Department shall be transmitted by the Assistant Secretary-Management to the Director, Bureau of Manpower Information System, U.S. Civil Service Commission, for decision.

(b) *Time limit.* (1) A final determination on any appeal shall be made within thirty (30) days (Saturdays, Sundays and legal public holidays excepted) after receipt of the appeal.

(2) The thirty (30) day period for decision on an appeal may be extended, for good cause shown, by the Secretary of the Interior. If the thirty (30) day period is extended, the individual submitting the appeal shall be notified of the extension and of the date on which a determination on the appeal is expected to be dispatched.

(c) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination.

(2) If the determination upholds, in whole or part, the initial decision rejecting the petitioned for amendment, the determination shall also advise the individual submitting the appeal:

(i) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the agency;

(ii) Of the procedure established by § 2.77 for the filing of the statement of disagreement;

(iii) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Department, a brief statement by the Department summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the challenged record will be provided a copy of any statement of dispute to the extent that an accounting of disclosure was maintained; and

(v) Of his or her right to seek judicial review of the Department's refusal to amend the record.

(3) If the determination reverses, in whole or in part, the initial decision rejecting the petitioned for amendment, the system manager responsible for the system containing the challenged record shall be directed to:

(i) Amend the challenged record accordingly; and

(ii) If an accounting of disclosure has been made, advise all previous recipients of the record which was amended of the amendment and its substance.

§ 2.76 [Reserved]

§ 2.77 Statements of disagreement.

(a) *Filing of statements.* If the determination of the Assistant Secretary-Management under § 2.75 rejects in whole or part, a petitioned for amendment, the individual submitting the petitioned may file with the system manager for the system containing the challenged record a concise written statement setting forth the reasons for his disagreement with the determination of the Department.

(b) *Disclosure of statements.* In any disclosure of a record containing information about which an individual has filed a statement of disagreement under this section occurring after the filing of the statement, the disputed portion of the record will be clearly noted and the recipient shall be provided copies of the statement of disagreement. If appropriate, a concise statement of the reasons of the Department for not making the requested amendments may also be provided to recipient.

(c) *Maintenance of statements.* System managers shall develop procedures to assure that statements of disagreement filed with them shall be maintained in such a way as to assure dissemination of the statements to recipients of the records to which they pertain.

§ 2.78 [Reserved]

§ 2.79 Exemptions.

(a) *Criminal law enforcement records exempt under 5 U.S.C. 552a(j)(2).* Pursuant to 5 U.S.C. § 552a(j)(2) the following systems of records have been exempted from all of the provisions of 5 U.S.C. 552a and the regulations in this subpart except subsections (b), (c)(1), and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11) and (i) of 5 U.S.C. 552a and the portions of the regulations in this subpart implementing these subsections:

(1) Investigative Case File System, Interior/FWS–20.

(2) Law Enforcement Services System, Interior/BIA–18.

(3) Law Enforcement Statistical Reporting System, Interior/NPS–19.

(b) *Law enforcement records exempt under 5 U.S.C. 552a(k)(2).* Pursuant to 5 U.S.C. 552a(k)(2), the following systems of records have been exempted from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these subsections:

(1) Investigative Records, Interior/Office of Secretary–6.

(2) Permits System, Interior/FWS–21.

(3) Criminal Case Investigation System, Interior/BLM–18.

(4) Civil Trespass Case Investigations, Interior/BLM–19.

(5) Employee Conduct Investigations, Interior/BLM–20.

(6) Special Investigations, Coal Mine Health and Safety, Interior/MESA–10.

(7) Employee Conduct Investigations, Interior/MESA–4 .

(8) Employee Financial Irregularities, Interior/NPS–17.

(9) Trespass Cases, Interior/Reclamation–37.

(10) Litigation, Appeal and Case Files System, Interior/Office of the Solicitor–1 to the extent that it consists of investigatory material compiled for law enforcement purposes.

(11) Endangered Species Licenses System, Interior/FWS–19.

(12) Investigative Case File, Interior/FWS–20.

(13) Timber Cutting and Trespass Claims Files, Interior/BIA–24.

(c) *Investigatory records exempt under 5 U.S.C. 552a(k)(5).* Pursuant to 5 U.S.C. 552a(k)(5), the following systems of records have been exempted from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a and the provisions of the regula-

tions in this subpart implementing these subsections:

(1) Applicant Files System, Interior/Office of the Secretary—29.

(2) National Research Council Grants Program, Interior/GS–9.

(3) Committee Management Files, Interior/OS—1.

[40 FR 7305, Feb. 19, 1975, as amended at 40 FR 54790, Nov. 26, 1975]

Subpart E—Compulsory Process and Testimony of Employees

§ 2.80 Compulsory process.

(a) If the production of any record of the Department is sought by compulsory process and if it is determined in accordance with the provisions of § 2.13 that the record should not be disclosed, the person making such determination shall immediately report the matter to the Solicitor. The person to whom the compulsory process is directed shall appear in answer to the process and respectfully decline to produce the record on the ground that the disclosure, pending the receipt of instructions from the Secretary of the Interior, is prohibited by the regulations in this Subpart.

(b) The Solicitor of the Department of the Interior is authorized to exercise all of the authority of the Secretary of the Interior under this section.

§ 2.82 Testimony of employees.

(a) An officer or employee of the Department shall not testify in any judicial or administrative proceeding concerning matters related to the business of the Government without the permission of the head of the bureau, or his designee, or of the Secretary of the Interior, or his designee. If the head of a bureau or his designee, concludes that permission should be withheld, he shall report the matter immediately to the Solicitor for a determination, and the officer or employee shall appear in answer to process and respectfully decline to testify, pending the receipt of instructions from the Secretary, on the ground that testimony is prohibited by the regulations in this part. Pending instructions from the Secretary or his designee, an officer or employee in the Office of the Secretary shall follow the same procedure.

(b) Any person (including a public agency) wishing an officer or employee of the Department to testify in a judicial or administrative proceeding concerning a matter related to the business of the Government may be required to submit a statement setting forth the interest of the litigant and the information with respect to which the testimony of the officer or employee of the Department is desired, before permission to testify will be granted under this section.

(c) The Solicitor of the Department of the Interior is authorized to exercise all of the authority of the Secretary of the Interior under this section.

APPENDIX A

FEES

The following uniform fee schedule is applicable to all constituent units of the Department. It states the fees to be charged to members of the public for services performed in locating and making available records or copies thereof in connection with requests made under the Freedom of Information Act. The fees are also applicable to services provided in duplicating and making available records in response to requests made under the Privacy Act. It also states the fees to be charged for certification of documents.

(1) *Photo copies, basic fee.* For photo copies of documents other than documents requiring special handling because of their age or unusual dimensions: $0.25 for the first page of copy, $0.05 for each page of copy thereafter reproduced on a standard office duplicating machine, in size up to 8½" x 13"

Examples: For a single copy of a three-page document, the fee would be $0.35. For two copies of a three-page document, the fee would be $0.50. For a single copy of two three-page documents in a single request the fee would be $0.50.

(2) *Photo copies, documents requiring special handling.* For photo copies of documents which require special handling because of their age: $0.25 for the first page of copy, $0.10 for each page of copy thereafter reproduced on a standard office duplicating machine, in size up to 8½" x 13".

(3) [Reserved].

(4) [Reserved].

(5) *Clerical searches.* For each quarter hour, or portion thereof, spent by clerical personnel in locating a requested record or records: $1.20.

(6) *Nonclerical searches.* For each quarter hour, or portion thereof, spent by professional or managerial personnel in locating a requested record or records where the search cannot be performed by clerical personnel: $2.20.

(7) [Reserved].

(8) *Certification.* For each certificate of verification attached to authenticated copies of records furnished to the public: $0.25.

(9) [Reserved].

(10) *Computerized records, computer time charges.* For services in processing requests for records maintained in computerized form (includes personnel cost):

(a) CDC 6500.

(i) Batch uses, central processing unit per hour, $160.00

(ii) Batch use, Input/Output, per hour, $105.00.

(iii) Remote Terminals, central processing unit, per hour, $160.00.

(iv) Remote Terminals, Input/Output, per hour, $185.00.

(v) Remote Terminals, connect time, per hour, $6.00.

(vi) Plotters, $27.00.

(b) *Burroughs 5500.*

(i) Computer time, per hour, $66.00.

(c) *CYBER 74–28.*

(i) Core Time, kiloword hour, $3.00.

(ii) Extended Core Storage, kiloword hour, $6.00.

(iii) Mass Storage, Input/Output, per 1000 physical records, $0.09.

(iv) Central processor, per second, $0.12.

(v) Magnetic Tape, Input/Output, per 1000 physical records, $3.00.

(vi) Card Input, per 1000 cards, $1.00.

(vii) Card Output, per 1000 cards, $7.00.

(viii) Printer, per 1000 lines, $1.00.

(ix) Interactive Terminal, connect time, per hour, $6.00.

(x) Permanent file storage, per sector/day, $0.0006.

(xi) Tape mounting, per mount, $5.00.

(xii) Xynetics Plotter, per hour, $21.60.

(xiii) F.R.—80 COM processing, per fiche, $3.50.

(xiv) 16 or 35 mm, per frame, $0.175.

(d) *IBM 1130.*

(i) Computer time, per hour, $25.00.

(e) *IBM 1620.*

(i) Computer time, per hour (no operator), $11.00; per hour (operator), $16.00.

(f) *NCR 200.*

(i) In house batch, per hour (no operator), $16.00; per hour (operator), $21.00.

(ii) Remote batch, per hour (no operator) $20.00; per hour (operator), $25.00.

(g) *DEC 1070.*

(i) Basic charge for batch processing. $4.00 per job plus $0.35 per 1000 disk accesses plus $260.00 per hour central processor charge.

(ii) Core use charge. In addition to the basic charges, a core use charge is added to each job. This charge is computed using the following formula: CPU Charge under paragraph (i) multiplied by Words of Core, divided by 25,000.

(iii) The basic batch processing charge in paragraph (i) is based on highest priority use of the computer. Unless otherwise requested, Freedom of Information requests shall be processed on this basis. If the requester so specifies, a request will be processed on the following basis: $2.00 per job plus $.20 per 1000 disk accesses plus $150.00 per hour central processor charge.

(h) *IBM 360/65 and 370/155.*

(i) Basic charge for batch processing. $16.00 per job plus $33.03 per 1000 tape access plus $11.01 per 1000 disk access plus $1320.00 per hour central processor charge.

(ii) Core use charge. (A) If in any Job Step the amount of core reserved exceeds the amount of core used by more than 20K, the basic charges are increased for every Job Step by 1% for each 1K of such excess core reserved. If the excess condition exists in more than one Job Step, the maximum excess is applied to the charges for all Job Steps. The minimum charge is $10.00.

(iii) The basic batch processing charge in paragraph (i) is based on highest priority use of the computer. Unless otherwise requested, Freedom of Information requests shall be processed on this basis. If the requester so specifies, a request will be processed on any one of seven lower priority bases. The charge for each priority basis is as follows:

(A) Priority A. $7.50 per job plus $21.96 per 1000 tape accesses plus $7.32 per 1000 disk accesses plus $880.00 per hour central processor charge.

(B) Priority B and C. $3.00 plus $10.98 plus $3.66 plus $440.00 per hour central processor charge.

(C) Priority D and E. $1.50 plus $6.48 plus $2.16 plus $260.00 per central processor charge.

(d) Priority F. $1.00 plus $3.24 plus $1.08 plus $130.00 per central processor charge.

(iv) Computer access by Denver Data 100 Terminal. Basic computer charges plus $1.10 per job plus $22 per Model 78 machine resource unit, defined as follows: Lines printed, divided by 13,333, plus cards read, divided by 5,556, plus cards punched, divided by 2,500.

(v) Computer access by Menlo Park Data 100 Terminal. Basic computer charges plus $41.10 per job plus $22.00 per Model 78 machine resource unit, defined as follows: Lines printed, divided by 12,300, plus cards reads, divided by 7,000, plus cards punched, divided by 4,500 plus tape mounts divided by 20.

(vi) Computer access by SEL–86. Basic computer charges plus $1 per job plus $20.00 per SEL machine resource unit, defined as lines printed, divided by 10,000, plus cards read, divided by 8,000, plus cards punched, divided by 5,000.

(11) *Computerized records, materials.* For materials used in processing requests for records maintained in computerized form:

(a) Paper, $7.00 per 1000 sheets.

(b) Cards, $1.60 per 1000 cards.

(12) [Reserved].

(13) [Reserved].

(14) Other services. When a response to a request requires services or materials other than the common ones described in this schedule, the direct cost of such services or materials to the Government may be charged, but only if the requester has been notified of such cost before it is incurred.

(15) Effective dates. This schedule applies to all requests made under the Freedom of Information and Privacy Act after April 30, 1976.

[41 FR 19109, May 10, 1976]